

# AN ACT

To amend sections 305.31, 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.10, 940.11, 940.12, 940.13, 940.19, 940.20, 940.21, 940.22, 940.23, 940.26, 940.29, 940.31, 940.32, 940.33, 940.34, 940.35, 6131.01, 6131.04, 6131.05, 6131.06, 6131.07, 6131.08, 6131.09, 6131.10, 6131.11, 6131.12, 6131.13, 6131.14, 6131.15, 6131.16, 6131.17, 6131.19, 6131.21, 6131.22, 6131.23, 6131.24, 6131.25, 6131.27, 6131.28, 6131.30, 6131.32, 6131.33, 6131.34, 6131.36, 6131.42, 6131.43, 6131.47, 6131.50, 6131.51, 6131.52, 6131.55, 6131.57, 6131.60, 6131.63, 6131.631, 6131.64, 6133.01, 6133.02, 6133.03, 6133.04, 6133.041, 6133.05, 6133.06, 6133.07, 6133.08, 6133.09, 6133.10, 6133.11, 6133.14, 6137.01, 6137.02, 6137.03, 6137.04, 6137.05, 6137.051, 6137.06, 6137.07, 6137.08, 6137.09, 6137.10, 6137.11, 6137.111, 6137.112, 6137.12, 6137.13, and 6137.14; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 940.26 (940.24), 940.29 (940.31), 940.33 (940.32), 940.34 (940.33), 940.31 (940.35), 940.32 (940.36), 940.35 (940.37), and 6131.57 (6131.061); to enact new sections 940.25, 940.26, 940.27, 940.28, 940.29, 940.30, and 940.34 and sections 940.38, 940.39, and 6131.101; and to repeal sections 940.18, 940.24, 940.25, 940.26, 940.27, 940.28, 940.29, 940.30, 6131.18, 6131.26, 6131.29, 6131.35, 6131.44, 6131.48, 6131.49, 6131.56, and 6131.62 of the Revised Code to revise the state's drainage laws.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 305.31, 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.10, 940.11, 940.12, 940.13, 940.19, 940.20, 940.21, 940.22, 940.23, 940.26, 940.29, 940.31, 940.32, 940.33, 940.34, 940.35, 6131.01, 6131.04, 6131.05, 6131.06, 6131.07, 6131.08, 6131.09, 6131.10, 6131.11, 6131.12, 6131.13, 6131.14, 6131.15, 6131.16, 6131.17, 6131.19, 6131.21, 6131.22, 6131.23, 6131.24, 6131.25, 6131.27, 6131.28, 6131.30, 6131.32, 6131.33, 6131.34, 6131.36, 6131.42, 6131.43, 6131.47, 6131.50, 6131.51, 6131.52, 6131.55, 6131.57, 6131.60, 6131.63, 6131.631, 6131.64, 6133.01, 6133.02, 6133.03, 6133.04, 6133.041, 6133.05, 6133.06, 6133.07, 6133.08, 6133.09, 6133.10, 6133.11, 6133.14, 6137.01, 6137.02, 6137.03, 6137.04, 6137.05, 6137.051, 6137.06, 6137.07, 6137.08, 6137.09, 6137.10, 6137.11, 6137.111, 6137.112, 6137.12, 6137.13, and 6137.14 be amended; sections 940.26 (940.24), 940.29 (940.31), 940.33 (940.32), 940.34 (940.33), 940.31 (940.35), 940.32 (940.36), 940.35 (940.37), and 6131.57 (6131.061) be amended for the purpose of adopting new section numbers as indicated in parentheses; and new sections 940.25, 940.26, 940.27, 940.28, 940.29, 940.30, and 940.34 and sections 940.38, 940.39,

and 6131.101 of the Revised Code be enacted to read as follows:

Sec. 305.31. The procedure for submitting to a referendum a resolution adopted by a board of county commissioners under division (H) of section 307.695 of the Revised Code that is not submitted to the electors of the county for their approval or disapproval; any resolution adopted by a board of county commissioners pursuant to division (D)(1) of section 307.697, section 322.02, or 322.06, sections ~~940.31-940.32~~ and ~~940.33~~ 940.35, division (B)(1) of section 4301.421, section 4504.02, 5739.021, or 5739.026, division (A)(6), (A)(10), or (M) of section 5739.09, section 5741.021 or 5741.023, or division (C)(1) of section 5743.024 of the Revised Code; or a rule adopted pursuant to section 307.79 of the Revised Code shall be as prescribed by this section.

Except as otherwise provided in this paragraph, when a petition, signed by ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the county, is filed with the county auditor within thirty days after the date the resolution is passed or rule is adopted by the board of county commissioners, or is filed within forty-five days after the resolution is passed, in the case of a resolution adopted pursuant to section 5739.021 of the Revised Code that is passed within one year after a resolution adopted pursuant to that section has been rejected or repealed by the electors, requesting that the resolution be submitted to the electors of the county for their approval or rejection, the county auditor shall, after ten days following the filing of the petition, and not later than four p.m. of the ninetieth day before the day of election, transmit a certified copy of the text of the resolution or rule to the board of elections. In the case of a petition requesting that a resolution adopted under division (D)(1) of section 307.697, division (B)(1) of section 4301.421, or division (C)(1) of section 5743.024 of the Revised Code be submitted to electors for their approval or rejection, the petition shall be signed by seven per cent of the number of electors who voted for governor at the most recent election for the office of governor in the county. The county auditor shall transmit the petition to the board together with the certified copy of the resolution or rule. The board shall examine all signatures on the petition to determine the number of electors of the county who signed the petition. The board shall return the petition to the auditor within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the resolution or rule to the electors of the county, for their approval or rejection, at the succeeding general election held in the county in any year, or on the day of the succeeding primary election held in the county in even-numbered years, occurring subsequent to ninety days after the auditor certifies the sufficiency and validity of the petition to the board of elections.

No resolution shall go into effect until approved by the majority of those voting upon it. However, a rule shall take effect and remain in effect unless and until a majority of the electors voting on the question of repeal approve the repeal. Sections 305.31 to 305.41 of the Revised Code do not prevent a county, after the passage of any resolution or adoption of any rule, from proceeding at once to give any notice or make any publication required by the resolution or rule.

The board of county commissioners shall make available to any person, upon request, a certified copy of any resolution or rule subject to the procedure for submitting a referendum under sections 305.31 to 305.42 of the Revised Code beginning on the date the resolution or rule is adopted by the board. The board may charge a fee for the cost of copying the resolution or rule.

As used in this section, "certified copy" means a copy containing a written statement attesting

that it is a true and exact reproduction of the original resolution or rule.

Sec. 940.01. As used in this chapter:

(A) "Soil and water conservation district" means a district organized in accordance with this chapter.

(B) "Supervisor" means one of the members of the governing body of a district.

(C) "Landowner," "owner," or "owner of land" means an owner of record as shown by the records in the office of the county recorder. With respect to an improvement or a proposed improvement, "landowner," "owner," or "owner of land" also includes any public corporation and the director of any department, office, or institution of the state that is affected by the improvement or that would be affected by the proposed improvement, but that does not own any right, title, estate, or interest in or to any real property.

(D) "Land occupier" or "occupier of land" means any person, firm, or corporation that controls the use of land whether as landowner, lessee, renter, or tenant.

(E) "Due notice" means notice published at least twice, stating time and place, with an interval of at least thirteen days between the two publication dates, in a newspaper of general circulation within a soil and water conservation district.

(F) "Agricultural pollution" means failure to use management or conservation practices in farming or silvicultural operations to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by residual farm products, manure, or soil sediment, including substances attached thereto.

(G) "Urban sediment pollution" means failure to use management or conservation practices to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by soil sediment 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, except lands being used in a strip mine operation as defined in section 1513.01 of the Revised Code and except lands being used in a surface mining operation as defined in section 1514.01 of the Revised Code.

(H) "Uniform assessment" means an assessment that is both of the following:

(1) Based upon a complete appraisal of ~~each~~ both of the following:

(a) Each parcel of land, together with all improvements thereon, within a project-the area that will benefit from a proposed improvement; and of the

(b) The benefits or damages brought about as a result of the project-proposed improvement that is determined by criteria applied equally to all parcels within the project-area; that will benefit from the proposed improvement.

(2) Levied upon the parcels at a uniform rate on the basis of the appraisal.

(I) "Varied assessment" means any assessment that does not meet the criteria established in division (H) of this section.

(J) ~~"Project area" means an area determined and certified by the supervisors of a soil and water conservation district under section 940.25 of the Revised Code.~~

(K) "Benefit" or "benefits" means advantages to land and owners, to public corporations, and to the state resulting from drainage, conservation, control, and management of water and from environmental, wildlife, and recreational improvements. "Benefit" or "benefits" includes, but is not

limited to, any of the following factors:

- (1) Elimination or reduction of damage from flooding;
- (2) Removal of water conditions that jeopardize public health, safety, or welfare;
- (3) Increased value of land resulting from an improvement;
- (4) Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other incidental purpose;
- (5) Providing an outlet for the accelerated runoff from artificial drainage if a stream, watercourse, channel, or ditch that is under improvement is called upon to discharge functions for which it was not designed. Uplands that have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other human methods shall be considered to be benefited by an improvement that is required to dispose of the accelerated flow of water from the uplands.

~~(L)~~(K) "Improvement" or "conservation works of improvement" means an improvement that is made under the authority established in division (C) of section 940.06 of the Revised Code.

~~(M)~~(L) "Land" has the same meaning as in section 6131.01 of the Revised Code.

~~(N)~~(M) "Manure," "operation and management plan," and "residual farm products" have the same meanings as in section 939.01 of the Revised Code.

~~(O)~~(N) "Voluntary nutrient management plan" has the same meaning as in section 905.31 of the Revised Code.

(O) "Lead county" means the county in which the majority of the initial length of a proposed improvement would be located, as set forth in a petition, when the proposed improvement would be located in two or more counties.

(P) "Day" means calendar day.

Sec. 940.02. There is hereby established in the department of agriculture the Ohio soil and water conservation commission. The commission shall consist of seven members of equal status and authority, six of whom shall be appointed by the governor with the advice and consent of the senate, and one of whom shall be designated by resolution of the board of directors of the Ohio federation of soil and water conservation districts. The directors of agriculture, environmental protection, and natural resources, the vice-president for agricultural administration of the Ohio state university, and an officer of the Ohio federation of soil and water conservation districts, or their designees, may serve as ex officio members of the commission, but without the power to vote. A vacancy in the office of an appointed member shall be filled by the governor, with the advice and consent of the senate. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Of the appointed members, four shall be persons who have a knowledge of or interest in agricultural production and the natural resources of the state. One member shall represent rural interests and one member shall represent urban interests. Not more than three of the appointed members shall be members of the same political party.

Terms of office of the member designated by the board of directors of the federation and the members appointed by the governor shall be for four years, commencing on the first day of July and ending on the thirtieth day of June.

Each appointed member shall hold office from the date of appointment until the end of the

term for which the member was appointed. Any appointed member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The commission shall organize by selecting from its members a chairperson and a vice-chairperson. The commission shall hold at least one regular meeting in each quarter of each calendar year and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairperson and shall be called by the chairperson upon receipt of a written request signed by two or more members of the commission. Written notice of the time and place of each meeting shall be sent to each member of the commission. A majority of the commission shall constitute a quorum.

The commission may adopt rules as necessary to carry out the purposes of this chapter, subject to Chapter 119. of the Revised Code.

The governor may remove any appointed member of the commission at any time for inefficiency, neglect of duty, or malfeasance in office, after giving to the member a copy of the charges against the member and an opportunity to be heard publicly in person or by counsel in the member's defense. Any such act of removal by the governor is final. A statement of the findings of the governor, the reason for the governor's action, and the answer, if any, of the member shall be filed by the governor with the secretary of state and shall be open to public inspection.

All members of the commission shall be reimbursed for the necessary expenses incurred by them in the performance of their duties as members.

Upon recommendation by the commission, the director of agriculture shall designate an executive secretary and provide staff necessary to carry out the powers and duties of the commission.

The commission shall do all of the following:

(A) Determine distribution of funds under section 940.15 of the Revised Code, recommend to the director and other agencies the levels of appropriations to special funds established to assist soil and water conservation districts, and recommend the amount of federal funds to be requested and policies for the use of such funds in support of soil and water conservation district programs;

(B) Assist in keeping the board of supervisors of soil and water conservation districts informed of ~~their~~ its powers and duties, program opportunities, and the activities and experience of all other districts, and facilitate the interchange of advice, experience, and cooperation between the districts;

(C) Seek the cooperation and assistance of the federal government or any of its agencies, and of agencies of this state, in the work of the districts;

(D) Adopt appropriate rules governing the conduct of elections provided for in this chapter, subject to Chapter 119. of the Revised Code, provided that only owners and occupiers of lands situated within the boundaries of the districts or proposed districts to which the elections apply shall be eligible to vote in the elections;

(E) Recommend to the director priorities for planning and construction of small watershed projects, and make recommendations to the director concerning coordination of programs as proposed and implemented in agreements with soil and water conservation districts;

(F) Recommend to the director, the governor, and the general assembly programs and legislation with respect to the operations of soil and water conservation districts that will encourage

proper soil, water, and other natural resource management 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 water quality standards adopted pursuant to section 6111.041 of the Revised Code. The director of environmental protection may coordinate with the division of soil and water conservation in the department of agriculture and soil and water conservation districts for the abatement of agricultural pollution.

Sec. 940.05. The ~~governing body~~ board of supervisors of a soil and water conservation district shall consist of five supervisors, as provided for in section 940.04 of the Revised Code.

The ~~supervisors board~~ shall organize annually by selecting a chairperson, a secretary, and a treasurer. ~~They~~ It shall designate one of ~~their~~ its members as fiscal agent. A majority of the ~~five supervisors board~~ shall constitute a quorum. The concurrence of a majority of the ~~five supervisors board~~ in any matter shall be required for its determination. A supervisor shall receive no compensation for the supervisor's services, except when both of the following occur:

(A) A district board of supervisors designates one or more of its supervisors to represent the district on a joint district board or if an agency or instrumentality of the United States, of this state, or of a political subdivision of this state requires or requests district board representation;

(B) Such compensation is provided for by public moneys other than moneys in the special fund of the local district created pursuant to section 940.12 of the Revised Code.

A supervisor is entitled to be reimbursed for the necessary expenses incurred in the discharge of official duties.

The ~~supervisors board of supervisors~~ shall furnish to the Ohio soil and water conservation commission, upon its request, copies of rules, orders, contracts, forms, and other documents ~~they adopt or employ~~ it adopts or employs and other information concerning ~~their~~ its activities as it requires in the performance of its duties under this chapter.

At least once each year, a district shall submit to the commission a report of progress and operations, including a summary of receipts and disbursements during the period covered by the report. A district shall submit additional financial reports as requested by the commission.

The ~~supervisors board~~ shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds and shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions and orders issued or adopted. Any supervisor may be removed by the commission upon notice and hearing for neglect of duty or malfeasance in office.

Sec. 940.06. The board of supervisors of a soil and water conservation district have the following powers in addition to ~~their~~ its other powers:

(A) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and the preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water needed within the district, and to publish the results of those surveys, investigations, or research, provided that no district shall initiate any research program except in cooperation or after consultation with the Ohio agricultural research and development center;

(B) To develop plans for the conservation of soil resources, for the control and prevention of soil erosion, and for works of improvement for flood prevention and the conservation, development,

utilization, and disposal of water within the district, and to publish those plans and information;

(C) To implement, construct, repair, maintain, and operate preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention, and the conservation, development, utilization, and disposal of water within the district on lands owned or controlled by this state or any of its agencies and on any other lands within the district, which works may include any facilities authorized under state or federal programs, and to acquire, by purchase or gift, to hold, encumber, or dispose of, and to lease real and personal property or interests in such property for those purposes;

(D) To cooperate or enter into agreements with any occupier of lands within the district in the carrying on of natural resource conservation operations and works of improvement for flood prevention and the conservation, development, utilization, and management of natural resources within the district, subject to such conditions as the supervisors consider necessary;

(E) To accept donations, gifts, grants, and contributions in money, service, materials, or otherwise, and to use or expend them according to their terms;

(F) To adopt, amend, and rescind rules to carry into effect the purposes and powers of the district;

(G) To sue and plead in the name of the district, and be sued and impleaded in the name of the district, with respect to its contracts and, as indicated in section 940.07 of the Revised Code, certain torts of its officers, employees, or agents acting within the scope of their employment or official responsibilities, or with respect to the enforcement of its obligations and covenants made under this chapter;

(H) To make and enter into all contracts, leases, and agreements and execute all instruments necessary or incidental to the performance of the duties and the execution of the powers of the district under this chapter, provided that all of the following apply:

(1) Except as provided in section 307.86 of the Revised Code regarding expenditures by boards of county commissioners, when the cost under any such contract, lease, or agreement, other than compensation for personal services or rental of office space, involves an expenditure of more than the amount established in that section regarding expenditures by boards of county commissioners, the ~~supervisors board~~ shall make a written contract with the lowest and best bidder after advertisement, for not less than two nor more than four consecutive weeks preceding the day of the opening of bids, in a newspaper of general circulation within the district or as provided in section 7.16 of the Revised Code and in such other publications as the supervisors determine. The notice shall state the general character of the work and materials to be furnished, the place where plans and specifications may be examined, and the time and place of receiving bids.

(2) Each bid for a contract shall contain the full name of every person interested in it.

(3) Each bid for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement shall meet the requirements of section 153.54 of the Revised Code.

(4) Each bid for a contract, other than a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, at the discretion of the ~~supervisors board~~, may be accompanied by a bond or certified check on a solvent bank in an amount not to exceed five per cent of the bid, conditioned that, if the bid is accepted, a contract shall be entered into.

(5) The ~~supervisors board~~ may reject any and all bids.

(I) To charge, alter, and collect rentals and other charges for the use or services of any works of the district;

(J) To enter, either in person or by designated representatives, upon lands, private or public, in the necessary discharge of their duties;

(K) To enter into agreements or contracts with the department of agriculture for the determination, implementation, inspection, and funding of agricultural pollution abatement measures whereby landowners, operators, managers, and developers may meet adopted state standards for a quality environment, except that failure of a ~~district board of supervisors~~ to negotiate an agreement or contract with the department authorizes the department to implement the required program;

(L) To conduct demonstrations and provide information to the public regarding practices and methods for natural resource conservation, development, and utilization;

(M) To enter into contracts or agreements with the director of environmental protection in furtherance of actions to abate urban sediment pollution;

(N) To develop operation and management plans as necessary;

(O) To determine whether operation and management plans developed under division (A) of section 939.03 of the Revised Code comply with the standards established under division (E)(1) of section 939.02 of the Revised Code and to approve or disapprove the plans, based on such compliance. If an operation and management plan is disapproved, the board shall provide a written explanation to the person who submitted the plan. The person may appeal the plan disapproval to the director of agriculture or the director's designee, who shall afford the person a hearing. Following the hearing, the director or the director's designee shall uphold the plan disapproval or reverse it. If the director or the director's designee reverses the plan disapproval, the plan shall be deemed approved under this division. In the event that any person operating or owning agricultural land or an animal feeding operation in accordance with an approved operation and management plan who, in good faith, is following that plan, causes agricultural pollution, the plan shall be revised in a fashion necessary to mitigate the agricultural pollution, as determined and approved by the board ~~of supervisors of the soil and water conservation district~~.

(P) To develop timber harvest plans;

(Q) To determine whether timber harvest plans developed under division (A) of section 1503.52 of the Revised Code comply with the standards established under division (A)(1) of section 1503.51 of the Revised Code and to approve or disapprove the plans based on such compliance. If a timber harvest plan is disapproved, the board shall provide a written explanation to the person who submitted the plan. The person may appeal the plan disapproval to the chief of the division of forestry or the chief's designee, who shall afford the person a hearing. Following the hearing, the chief or the chief's designee shall uphold the plan disapproval or reverse it. If the chief or the chief's designee reverses the plan disapproval, the plan shall be deemed approved under this division.

(R) With regard to composting conducted in conjunction with agricultural operations, to do all of the following:

(1) Upon request or upon their own initiative, inspect composting at any such operation to determine whether the composting is being conducted in accordance with section 939.04 of the Revised Code;

(2) If the board determines that composting is not being so conducted, request the director to



take corrective actions under section 939.07 of the Revised Code that require the person who is conducting the composting to prepare a composting plan in accordance with rules adopted under division (E)(5)(a) of section 939.02 of the Revised Code and to operate in accordance with that plan or to operate in accordance with a previously prepared plan, as applicable;

(3) In accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code, review and approve or disapprove any such composting plan. If a plan is disapproved, the board shall provide a written explanation to the person who submitted the plan.

As used in division (R) of this section, "composting" has the same meaning as in section 939.01 of the Revised Code.

(S) With regard to conservation activities that are conducted in conjunction with agricultural operations, to assist the county auditor, upon request, in determining whether a conservation activity is a conservation practice for purposes of Chapter 929. or sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.

As used in this division, "conservation practice" has the same meaning as in section 5713.30 of the Revised Code.

(T) To develop and approve or disapprove voluntary nutrient management plans in accordance with section 905.323 of the Revised Code;

(U) To do all acts necessary or proper to carry out the powers granted in this chapter.

The director shall make recommendations to reduce the adverse environmental effects of each project that a soil and water conservation district plans to undertake under division (A), (B), (C), or (D) of this section and that will be funded in whole or in part by moneys authorized under section 940.17 of the Revised Code and shall disapprove any such project that the director finds will adversely affect the environment without equal or greater benefit to the public. The director's disapproval or recommendations, upon the request of the district filed in accordance with rules adopted by the Ohio soil and water conservation commission, shall be reviewed by the commission, which may confirm the director's decision, modify it, or add recommendations to or approve a project the director has disapproved.

Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code.

Sec. 940.07. (A) As used in this section:

(1) "Judgment" includes a consent judgment.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for a breach of contract or another agreement between persons.

(B) Except as provided in divisions (C) and (D) of this section, the provisions of Chapter 2744. of the Revised Code apply to soil and water conservation districts as political subdivisions of the state and to their boards of supervisors and other officers, employees, and agents as employees of political subdivisions of the state.

(C)(1) The attorney general, an assistant attorney general, or special counsel appointed by the attorney general shall defend a soil and water conservation district in any tort action that is commenced against the district as a political subdivision of the state under or pursuant to Chapter

2744. of the Revised Code, if a written request for the legal representation is submitted to the attorney general by the Ohio soil and water conservation commission. If a request is so submitted, the prosecuting attorney of the county associated with the district does not have legal representation duties in connection with the tort action under section 940.13 of the Revised Code.

(2) The attorney general, an assistant attorney general, or special counsel appointed by the attorney general shall defend a supervisor or other officer, employee, or agent of a soil and water conservation district in any tort action that is commenced against that person and based upon an action or omission allegedly associated with that person's employment or official responsibilities for the district, if both of the following apply:

(a) At the time of the action or omission, the person was not acting manifestly outside the scope of the person's employment or official responsibilities for the district or acting with malicious purpose, in bad faith, or in a wanton or reckless manner;

(b) A written request for the legal representation is submitted to the attorney general by the Ohio soil and water conservation commission.

(3) If a request for legal representation is submitted to the attorney general pursuant to division (C)(2) of this section, divisions (A) and (D) of section 2744.07 of the Revised Code do not apply to the soil and water conservation district and the defense of its supervisor or other officer, employee, or agent.

(D)(1) The state shall indemnify and hold harmless a soil and water conservation district as follows:

(a) In the amount of any judgment that is rendered against the district in a tort action that is commenced under or pursuant to Chapter 2744. of the Revised Code;

(b) In the amount of any settlement of a tort action against the district as described in division (D)(1)(a) of this section, or of a claim for damages for injury, death, or loss to person or property that could become a basis of a tort action against the district as described in division (D)(1)(a) of this section.

(2) The state shall indemnify and hold harmless a supervisor or other officer, employee, or agent of a soil and water conservation district as follows:

(a) Subject to the limitations specified in division (D)(3) of this section, in the amount of any judgment that is rendered against that person in a tort action based upon an action or omission allegedly associated with the person's employment or official responsibilities for the district;

(b) Subject to the limitations specified in division (D)(3) of this section, in the amount of any settlement of a tort action as described in division (D)(2)(a) of this section or of any settlement of a claim for damages for injury, death, or loss to person or property that could become a basis of a tort action as described in division (D)(2)(a) of this section.

(3)(a) The maximum aggregate amount of indemnification paid directly from state funds to or on behalf of any supervisor or other officer, employee, or agent of a soil and water conservation district pursuant to divisions (D)(2)(a) and (b) of this section shall be one million dollars per occurrence, regardless of the number of persons who suffer injury, death, or loss to person or property as a result of the action or omission of that person.

(b) An indemnification may be made pursuant to division (D)(2)(a) or (b) of this section only if, at the time of the action or omission, the supervisor or other officer, employee, or agent of a soil

and water conservation district was not acting manifestly outside the scope of the supervisor's or other officer's, employee's, or agent's employment or official responsibilities for the district or acting with malicious purpose, in bad faith, or in a wanton or reckless manner.

(c) An indemnification shall not be made pursuant to division (D)(2)(a) or (b) of this section for any portion of a consent judgment or settlement that is unreasonable or for any portion of a judgment that represents punitive or exemplary damages.

(4) Division (B) of section 2744.07 of the Revised Code does not apply to a soil and water conservation district, or to any of its supervisors or other officers, employees, or agents, to the extent that division (D) of this section requires the state to indemnify and hold harmless a supervisor or other officer, employee, or agent of that district.

Sec. 940.08. The board of supervisors of a soil and water conservation district may employ assistants and such other employees as ~~they consider it~~ considers necessary and may provide for the payment of the reasonable compensation of such assistants and employees and expenses incurred by them in the discharge of their duties from the special fund established for the district pursuant to section 940.12 of the Revised Code.

District employees are entitled to the sick leave benefits that are provided in section 124.38 of the Revised Code and the vacation leave benefits that are provided in section 325.19 of the Revised Code and are entitled to participate in the sick leave donation program established under section 940.09 of the Revised Code.

The ~~supervisors board~~ may designate the amounts and forms of other benefits, including insurance protection, to be provided to employees and may make payments of benefits from the district fund that is created with moneys accepted by the supervisors in accordance with division (E) of section 940.06 of the Revised Code or from the special fund created pursuant to section 940.12 of the Revised Code. The board of county commissioners may make payments of benefits that are provided under this section.

The board of supervisors may purchase such materials, equipment, and supplies, may lease such equipment, and may rent, purchase, or construct, and maintain, such offices, and provide for such equipment and supplies therefor, as ~~they consider it~~ considers necessary and may pay for the same from the special fund established for the district pursuant to section 940.12 of the Revised Code.

Sec. 940.10. (A) When the board of supervisors of a soil and water conservation district find, by resolution, that the district has personal property, including motor vehicles acquired for the use of district officers, road machinery, equipment, tools, or supplies, that is not needed for public use, or is obsolete or unfit for the use for which it was acquired, the ~~supervisors board~~ may sell such property at public auction or by sealed bid to the highest bidder. ~~The board may sell the property~~ after giving at least ten days' notice of the time, place, and manner of sale by posting a typewritten or printed notice in the office of the board of county commissioners. If the fair market value of the property to be sold pursuant to this division is, in the opinion of the board of supervisors, in excess of two thousand dollars, notice of the time, place, and manner of the sale shall also be published in a newspaper of general circulation in the district at least ten days prior to such sale. The ~~supervisors board~~ board may authorize the sale of such personal property without advertisement or public notification and competitive bidding to the federal government, the state, or any political subdivision of the state.

If the ~~supervisors conduct~~ board conducts a sale of personal property by sealed bid, the form of the bid shall be as prescribed by the ~~supervisors board~~, and each bid shall contain the name of the person submitting it. Bids received shall be opened and tabulated at the time stated in the notice. The property shall be sold to the highest bidder, except that the ~~supervisors board~~ may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed by this section.

(B) Where the ~~supervisors find~~ board finds, by resolution, that the district has vehicles, equipment, or machinery that is not needed, or is unfit for public use, and the ~~supervisors desire~~ board desires to sell such vehicles, equipment, or machinery to the person or firm from which ~~they propose it~~ proposes to purchase other vehicles, equipment, or machinery, the ~~supervisors board~~ may offer to ~~sell~~ do both of the following:

(1) Sell the vehicles, equipment, or machinery to such person or firm; ~~and to have~~

(2) Have such selling price credited to the person or firm against the purchase price of other vehicles, equipment, or machinery.

(C) Where the ~~supervisors advertise~~ board advertises for bids for the sale of new vehicles, equipment, or machinery to the district, ~~they it~~ may include in the same advertisement a notice of ~~their its~~ willingness to accept ~~do both of the following~~:

(1) Accept bids for the purchase of district-owned vehicles, equipment, or machinery that is obsolete or not needed for public use; ~~and to have~~

(2) Have the amount of such bids subtracted from the selling price of the other vehicles, equipment, or machinery as a means of determining the lowest responsible bidder.

Sec. 940.11. (A) Not later than three months after ~~the effective date of this amendment~~ November 2, 2018, the board of supervisors of a soil and water conservation district that hold a credit card account on ~~the effective date of this amendment~~ November 2, 2018, shall adopt a written policy for the use of credit card accounts. Otherwise, the ~~supervisors board~~ shall adopt a written policy before first holding a credit card account.

The policy shall include provisions addressing all of the following:

(1) The ~~supervisors~~ members of the board or positions authorized to use a credit card account;

(2) The types of expenses for which a credit card account may be used;

(3) The procedure for acquisition, use, and management of a credit card account and presentation instruments related to the account including cards and checks;

(4) The procedure for submitting itemized receipts to the fiscal agent or the fiscal agent's designee;

(5) The procedure for credit card issuance, credit card reissuance, credit card cancellation, and the process for reporting lost or stolen credit cards;

(6) The district's credit card account's maximum credit limit or limits;

(7) The actions or omissions by an officer or employee that qualify as misuse of a credit card account.

(B) The name of the soil and water conservation district shall appear on each presentation instrument related to the account including cards and checks.

(C) If the fiscal agent of the district does not retain general possession and control of the credit card account and presentation instruments related to the account including cards and checks,

the ~~supervisors-board~~ shall appoint a compliance officer to perform the duties enumerated under division (D) of this section. The compliance officer may not use a credit card account and may not authorize a ~~supervisor-board member~~ or employee to use a credit card account. The fiscal agent is not eligible for appointment as compliance officer.

(D) The compliance officer, if applicable, and the ~~supervisors-board~~ at least quarterly shall review the number of cards and accounts issued, the number of active cards and accounts issued, the cards' and accounts' expiration dates, and the cards' and accounts' credit limits.

(E) If the fiscal agent retains general possession and control of the credit card account and presentation instruments related to the account including cards and checks, and the ~~supervisors-board~~ authorize a ~~supervisor-board member~~ or employee to use a credit card, the fiscal agent may use a system to sign out credit cards to the authorized users. The ~~supervisor-board member~~ or employee is liable in person and upon any official bond the ~~supervisor-member~~ or employee has given to the district to reimburse the district treasury the amount for which the ~~supervisor-member~~ or employee does not provide itemized receipts in accordance with the policy described in division (A) of this section.

(F) The use of a credit card account for expenses beyond those authorized by the ~~supervisors-board~~ constitutes misuse of a credit card account. A ~~supervisor-board member~~ or employee of a soil and water conservation district or a public servant as defined under section 2921.01 of the Revised Code who knowingly misuses a credit card account held on behalf of a soil and water conservation district violates section 2913.21 of the Revised Code.

(G) The fiscal agent or the fiscal agent's designee annually shall file a report with the ~~supervisors-board~~ detailing all rewards received based on the use of the soil and water conservation district's credit card account.

(H) As used in this section, "credit card account" means any bank-issued credit card account, store-issued credit card account, financial institution-issued credit card account, financial depository-issued credit card account, affinity credit card account, or any other card account allowing the holder to purchase goods or services on credit or to transact with the account, and any debit or gift card account related to the receipt of grant moneys. "Credit card account" does not include a procurement card account, gasoline or telephone credit card account, or any other card account where merchant category codes are in place as a system of control for use of the card account.

Sec. 940.12. The board of county commissioners of each county in which there is a soil and water conservation district may levy a tax within the ten-mill limitation and may appropriate money from the proceeds of the levy or from the general fund of the county. The money shall be held in a special fund for the credit of the district, to be expended for the purposes prescribed in section 940.08 of the Revised Code or under the policy adopted under section 940.11 of the Revised Code, for construction and maintenance of improvements by the district, and for other expenses incurred in carrying out the program of the district upon the written order of the fiscal agent for the district after authorization by a majority of the board of supervisors of the district.

Sec. 940.13. (A) The prosecuting attorney of a county in which there is a soil and water conservation district ~~shall be~~ is the legal adviser of the district. The prosecuting attorney ~~shall be~~ is the legal counsel of such district in all civil actions brought by or against it and shall conduct all such actions in the prosecuting attorney's official capacity. The board of supervisors of a district may also

employ such attorneys as may be necessary or desirable in the operations of the district.

(B) The prosecuting attorney of a lead county that is represented on a joint board of supervisors created under section 940.34 of the Revised Code is the legal advisor of the joint board in all civil actions brought by or against the joint board. The prosecuting attorney shall conduct all such actions in the prosecuting attorney's official capacity. The joint board may employ other attorneys as may be necessary or desirable in the operations of the joint board.

Sec. 940.19. (A) An owner of land that is located in a soil and water conservation district may file a petition with the board of supervisors of the district requesting the construction of a conservation work of improvement. Upon the receipt of such a petition, the supervisors shall make a preliminary determination to accept or reject the petition.

A petition may be rejected if the supervisors determine. Prior to filing a petition, the petitioner shall consult with the district to discuss the proposed drainage improvement and to determine the proper forms and procedures for filing the petition.

(B) The petition shall include all of the following:

(1) A statement of the nature of the work for which a petition is filed, including locating, cleaning, removing obstructions from, constructing, reconstructing, straightening, deepening, widening, altering, boxing, tiling, filling, walling, or arching any ditch, drain, watercourse, floodway, creek, run, or river; changing the course, location, or terminus thereof; or constructing a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the control of water;

(2) A description, including location, of the course and termini of the proposed improvement and the branches, spurs, or laterals, if any are petitioned for;

(3) A statement that the construction of the improvement is necessary and will benefit the petitioner; and

(4) A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land.

(C) The board shall make a preliminary determination to accept or reject the petition at the board's next scheduled meeting.

(D)(1) The board may reject the petition for any of the following reasons:

(a) The board determines that the information that it the petition contains about the proposed improvement is insufficient to enable the supervisors-board to proceed with the petition under this chapter or if the-

(b) The petition appears to be frivolous. The supervisors also may reject a petition on the grounds that the-

(c) The district lacks sufficient staff or other resources to proceed with the improvement in accordance with this chapter. If

(2) If the supervisors reject a board rejects the petition, they-it shall notify the petitioner in writing of the reasons for the rejection. A-The petitioner may amend a petition that was-is rejected due to insufficient information may be supplemented with additional information and filed again may subsequently file the amended petition with the board.

(E) If the supervisors accept a board accepts the petition for a proposed improvement, they the board shall establish-do both of the following:

~~(1) Establish~~ a date and time for a view of the proposed improvement, ~~which~~. ~~The~~ date shall be not fewer than ~~twenty-five~~ thirty nor more than ninety days after the date on which the petition was ~~filed~~ accepted. ~~The supervisors board shall designate a convenient place near the proposed improvement location at which the view shall start occur.~~

Upon receipt of a petition, ~~the supervisors also shall establish~~ (2) Establish a date and time on and at which and designate a location at which ~~they~~ the board will hold a hearing on the proposed improvement. The hearing shall occur not ~~later~~ fewer than thirty nor more than ninety days after the date established for the view.

(F) If a petitioner proposes an improvement that would be located in two or more adjoining soil and water conservation districts, the board of supervisors that receives the petition shall provide notice of the petition to the board of supervisors of each other county in which the proposed improvement would be located. The boards then shall create a joint board of supervisors under section 940.34 of the Revised Code and proceed in accordance with that section.

~~Sec. 940.20. As soon as the supervisors of a soil and water conservation district have established the dates, times, and locations of the view and the hearing concerning a proposed improvement, they shall send, at~~ (A) At least twenty ~~twenty-one~~ days prior to the date established for the view, the board of supervisors of a soil and water conservation district shall send a written notice of the view and the hearing to ~~the all~~ landowners within the area to be benefited by the proposed improvement and to the board of county commissioners and the county engineer. The board shall ensure that the notice contains all of the following:

(1) The date, time, and location for the view and the subsequent hearing;

(2) A description of the proposed improvement and its location as stated in the petition, a map indicating the location of the proposed improvement or information on where to access the map, and an explanation of how to obtain additional information or ask questions about the proposed improvement;

(3) A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land;

(4) A statement that a landowner may file, not more than twenty-one days after the date of the view, an amendment to the original petition that expands the length of the proposed improvement, provided that the amendment does not expand the area to be benefited by the proposed improvement;

(5) A statement that any landowner receiving the notice may comment on the proposed improvement in writing before or in person at the hearing on the petition;

(6) The address at which to file an amendment to the petition or submit written comments on the proposed improvement.

~~(B) The supervisors board shall notify all landowners that are adjacent to the proposed improvement either by certified mail or, if the supervisors have board has record of an internet identifier of record associated with such a landowner, by ordinary mail and by that internet identifier of record, and shall notify all others by certified mail or first class mailings. Any such~~ The written notice shall have the words "Legal Notice" printed in plain view on the face of the envelope or, in the case of service by an internet identifier of record, in conspicuous typeface at the top of the notice. ~~In addition, the supervisors~~

(C) The board shall invite to the view and the hearing the staff of the soil and water

conservation district and the staff of the natural resources conservation service in the United States department of agriculture that is involved with the district together with any other people that the ~~supervisors consider~~ board considers to be necessary to the proceedings.

(D) As used in this section, "internet identifier of record" has the same meaning as in section 9.312 of the Revised Code.

Sec. 940.21. (A) On the date established for the view of a proposed improvement, the board of supervisors of a soil and water conservation district or its designee shall meet at the designated location near the proposed improvement at the established time. At that time, they shall hear proof of the need for the proposed improvement offered by any landowner that is affected by it.

The supervisors shall view the area in which the proposed improvement is to be constructed. If the proposed improvement is a ditch, the view shall include the line of the proposed ditch and each branch, lateral, or spur of the ditch that is mentioned in the petition. If present an overview of the proposed improvement. In the presentation, the board or its designee shall use methods and means that the board determines will adequately inform those attending the view about the proposed improvement's location and the drainage issues intended to be addressed by the proposed improvement.

(B) Upon the request made at the view of a member of the board or of a landowner in the area to be benefited by the proposed improvement, the board or its designee shall recess the view and reconvene at a site along the proposed improvement for the purpose of gaining additional information about the drainage issue intended to be addressed by the proposed improvement. If the area to be viewed is extensive, the supervisors-board or its designee may conduct the view on more than one day and may adjourn from day to day, or a longer period, until the view is completed.

Sec. 940.22. (A) Upon acceptance of a petition requesting the construction of an improvement, the board of supervisors of a soil and water conservation district shall begin to prepare; as a guide to the board of county commissioners and the petitioners, a preliminary report regarding the proposed improvement. The supervisors-board shall present the completed preliminary report at the hearing that is held on the proposed improvement.

(B) The board shall ensure that the preliminary report shall include a includes all of the following:

(1) A preliminary estimate of the cost, comments of construction for the proposed improvement;

(2) Comments on the feasibility of the project, and a proposed improvement;

(3) A statement of the supervisors' board's opinion as to whether the benefits from the project proposed improvement are likely to exceed the estimated cost. The preliminary report shall identify;

(4) A list of all factors that are apparent to the supervisors identified by the board, both favorable and unfavorable to the proposed improvement, so that the petitioners may be informed concerning what is involved with the construction of the proposed improvement.

(C) In addition to reporting preparing a preliminary report on the improvement as petitioned, the supervisors-board may submit alternate proposals to accomplish the intent of the petition. The

(D) The preliminary report and all alternate proposals shall be reviewed and receive concurrence from an engineer who is employed by the department of agriculture or by the natural resources conservation service in the United States department of agriculture and who is responsible



for providing technical assistance to the district or from any other registered professional engineer ~~whom selected by the board of supervisors choose.~~

Sec. 940.23. ~~(A) On the date and at the time established by the board of supervisors for the hearing on a petition for a proposed improvement, the supervisors of a soil and water conservation district board shall conduct the hearing. Prior to the hearing, landowners affected by the proposed improvement may file objections to it with the supervisors, and at the hearing the supervisors shall hear any objections so filed. In addition At the hearing, the supervisors board shall present their do both of the following:~~

~~(1) Present the board's preliminary report on the proposed improvement and shall hear;~~

~~(2) Hear any comments or evidence offered by any landowner for or against construction of the proposed improvement. If~~

~~(B) If necessary, the hearing may occur on more than one day and may be adjourned from day to day or for a longer time that board may recess and continue the hearing on subsequent days as may be reasonable to consider additional information about the proposed improvement or so that all interested landowners may have an opportunity to be heard in favor of or in opposition to comment on the proposed improvement.~~

~~(C) At the conclusion of the hearing, the board shall vote to decide whether to proceed with a project survey and design or to dismiss the petition. In making its decision, the board shall take into consideration all of the following:~~

~~(1) The petition;~~

~~(2) The preliminary report;~~

~~(3) Comments on the proposed improvement;~~

~~(4) The protection of environmentally significant areas when those areas could be adversely affected by the construction of the proposed improvement and, if necessary, alternative plans providing for that protection and for construction of the proposed improvement.~~

~~(D) The board may proceed with the project survey and design for a proposed improvement if both of the following apply:~~

~~(1) The board finds that a proposed improvement is necessary and is conducive to the public welfare.~~

~~(2) The board is reasonably certain that the benefits of the proposed improvement will outweigh its costs.~~

Sec. ~~940.26~~ 940.24. ~~Upon approval by~~ After a vote of the board of supervisors of a soil and water conservation district ~~of a petition to proceed with a project survey and design for a proposed improvement, the supervisors board or their its designee shall conduct all necessary surveys for the proposed improvement. In addition, the supervisors board or their its designee shall prepare plans for constructing the improvement and shall prepare maps showing the location of the land that is proposed to be assessed in accordance with section 940.33 of the Revised Code for the improvement.~~

~~The supervisors or their designee shall prepare specifications. The plans shall include all of the following:~~

~~(A) Specifications for construction of the improvement and shall specify dimensions;~~

~~(B) Dimensions of any temporary easement that is necessary for construction purposes. In addition, the supervisors or their designee shall make estimates of the cost of material and any-~~

excavation costs. ~~The construction of the improvement may be divided into construction areas if that would be expedient;~~

~~(C) In the case of an improvement that is a ditch or similar structure for the disposal of water, the specifications for its construction that the supervisors or their designee must prepare shall provide for spreading provisions for all of the following:~~

~~(1) Spreading and leveling of spoil banks and shall provide for erosion;~~

~~(2) Erosion and sediment control through the establishment of a sod or seeded strip or other such controls if suitable vegetative cover is not present. With regard to sod or seeded strips, the board shall ensure that the plan provides that such strips will be not fewer than four ten feet nor more than fifteen feet wide, measured at right angles to the top of the ditch bank on both sides of the ditch, except where suitable vegetative cover exists. The strip Sod or seeded strips or other such controls shall be are considered to be part of the permanent improvement. Sod The board or its designee shall report to the county auditor the total acreage of sod or seeded strips or other such controls that are established and maintained in excess of four feet shall be compensated for by their removal accordance with this chapter. The county auditor shall remove the total acreage of sod or seeded strips or other such controls from the taxable valuation of the property of which they are a part.~~

~~The supervisors or their designee shall make note (D) An analysis of all fences, floodgates, culverts, bridges, and other structures that will be removed or adjusted in constructing the improvement. The supervisors or their designee also shall make note;~~

~~(E) An analysis of any gates that need to be installed in existing fences in order to provide access to the improvement for maintenance purposes. The plan shall require gates shall to be locked when requested by the owner of the fence and shall be considered to be a . Gates are part of the original improvement and subject to maintenance along with the improvement.~~

~~The supervisors shall submit the plans, specifications, and other information prepared in accordance with this section to the board of county commissioners of each county in which the proposed improvement is to be located.~~

Sec. 940.25. (A) After preparing the project survey, design, and plans for constructing the proposed improvement, the board of supervisors of a soil and water conservation district shall prepare a schedule of damages as part of the estimate of the total cost of constructing the proposed improvement.

(B) The schedule of damages shall include both of the following:

(1) An estimate of the value of land or other property necessary to be acquired through purchase or voluntary transfer or appropriated in accordance with sections 163.01 to 163.62 of the Revised Code and a description of that land or other property;

(2) An estimate of the total damages to be sustained by any landowner as a result of the construction and subsequent maintenance of a proposed improvement, along with the name and address of each landowner that is alleged to be damaged, the amount of each landowner's estimated damages, and an explanation of each landowner's damages.

Sec. 940.26. After preparing a schedule of damages, the board of supervisors of a soil and water conservation district or its designee shall make an estimate of the cost of the proposed improvement. The estimate shall include all of the following:

(A) Actual construction costs, including costs of addressing the construction specifications.

set forth in section 940.24 of the Revised Code:

(B) The estimated costs included in the schedule of damages prepared under section 940.25 of the Revised Code;

(C) Any expenses incurred in investigations, consulting services, and notifications related to the proposed improvement, and any other incidental costs.

Sec. 940.27. (A) After preparing an estimate of the cost of a proposed improvement, the board of supervisors of a soil and water conservation district or its designee shall prepare a schedule of estimated assessments on land within the area that will be benefited by a proposed improvement. The board shall include in the schedule the name and address of each landowner whose parcel of land will be benefited by the proposed improvement and a description of each landowner's parcel. The board shall obtain the names and addresses from the tax duplicates of the county. The board shall obtain the descriptions from the county recorder's office. For purposes of the description the county recorder shall not require a metes and bounds survey.

(B) In determining the estimated assessment on a parcel of land, the board or its designee shall do both of the following:

(1) Use the information compiled in accordance with sections 940.24 to 940.26 of the Revised Code;

(2) Consider, and incorporate when applicable, the following factors in the calculations:

(a) Acreage of the parcel;

(b) Volume of water produced by the parcel;

(c) Distance of the parcel from the proposed improvement;

(d) Percentage of the proposed improvement to be used by the parcel;

(e) The construction of works that are determined to solely benefit the particular parcel;

(f) Soil types of the parcel;

(g) The county auditor's land value or current agricultural use value, if applicable, of the parcel;

(h) Existing drainage infrastructure that can be incorporated into the proposed improvement and associated cost savings;

(i) Any other factors pertinent to the proposed improvement and the watershed that will be affected by the proposed improvement;

(j) Any benefits as defined in section 6131.01 of the Revised Code.

(C) Unless the board determines for good cause that a lower amount is appropriate, the board shall not establish an estimated assessment for a parcel of land in an amount less than twenty-five dollars, including the cost of preparing and mailing the notice required under section 940.32 of the Revised Code. If a dwelling is located on a lot that comprises two or more contiguous parcels of land, the board may establish an estimated assessment of not less than twenty-five dollars for all of the parcels, including the cost of preparing and mailing the notice required under section 940.32 of the Revised Code.

(D) The board shall ensure that the total of the estimated assessments, including the total estimated assessments allocated to public corporations and the state, is not greater than the estimated cost of the proposed improvement.

Sec. 940.28. After a board of supervisors of a soil and water conservation district completes

the schedule of estimated assessments, the board shall submit the petition, preliminary report, surveys, plans, specifications, schedule of damages, cost estimates, estimated assessments, and any other information obtained or prepared for the petition to the board of county commissioners of the county in which the proposed improvement is to be located.

Sec. 940.29. (A) Upon receiving the information submitted by a board of supervisors of a soil and water conservation district under section 940.28 of the Revised Code, the board of county commissioners shall establish the date, time, and location of a hearing regarding the proposed improvement.

(B) At least twenty-one days prior to the date established for the hearing, the clerk of the board of county commissioners shall send a written notice of the hearing by certified mail to all landowners that are adjacent to the proposed improvement. The clerk shall send such notice by certified or first class mail to all other landowners within the area to be benefited by the proposed improvement, the board of supervisors of the applicable soil and water conservation district, and the county engineer. The clerk shall include all of the following in the notice:

(1) The date, time, and location of the hearing;

(2) A description of any easement on the landowner's property that is necessary for purposes of the improvement;

(3) A landowner's estimated assessment;

(4) A statement that a landowner may file comments on the proposed improvement and exceptions to the estimated assessment in writing before the hearing or in person at the hearing;

(5) The address at which to submit written comments on the proposed improvement and exceptions to the estimated assessment.

(C) The clerk shall include printed words in plain view on the envelope containing the notice that read "Legal Notice of Proposed Drainage Improvement."

Sec. 940.30. (A) On the date established for the hearing, the board of county commissioners shall conduct the hearing by doing both of the following:

(1) Presenting the project design, construction plans, schedule of damages, cost estimates, and estimated assessments for the proposed improvement as submitted by the board of supervisors of the applicable soil and water conservation district;

(2) Hear any comments offered by any landowner regarding the estimated assessments and proposed improvement.

(B) If necessary, the board of county commissioners may adjourn and continue the hearing on subsequent days as may be reasonable to consider additional information about the proposed improvement, make changes that will better accomplish the purpose and object of the proposed improvement, or allow all interested landowners to have an opportunity to comment on the proposed improvement.

Sec. 940.29 940.31. Upon receipt of a certification under section 940.25 of the Revised Code, the board of county commissioners shall, within sixty days, approve or disapprove construction of the improvement. If a board disapproves construction of the improvement, the supervisors may revise the plan for the improvement and again proceed under section 940.25 of the Revised Code. If the board of county commissioners of each county containing any of the territory included in the project area approves construction of the improvement, the board, or if there is more than one such county,

~~the joint board formed under section 940.31 of the Revised Code, has in addition to its other powers, the powers of a soil and water conservation district granted by division (C) of section 940.06 of the Revised Code.~~

~~When considering whether to approve or disapprove construction of an improvement, the board shall consider all of the following factors:~~

- ~~(A) The cost of location and construction;~~
- ~~(B) The compensation for land or other property that must be taken;~~
- ~~(C) The benefits to the public welfare;~~
- ~~(D) The benefits to land, public corporations, and the state needing the improvement;~~
- ~~(E) In the case of an improvement involving the drainage of water, the effect on land below the improvement that may be caused by constructing the improvement and the sufficiency or insufficiency of the outlet that receives flow from the improvement;~~
- ~~(F) Any other proper matter that will assist the board in approving or disapproving construction of the improvement.~~

~~(A) At the conclusion of the hearing conducted under section 940.30 of the Revised Code, the board of county commissioners shall vote to approve or dismiss the petition.~~

~~(B) The board may approve the petition if the board is reasonably certain that:~~

- ~~(1) The benefits of the proposed improvement outweigh the costs.~~
- ~~(2) The proposed improvement is necessary.~~
- ~~(3) The proposed improvement will be conducive to the public welfare.~~
- ~~(4) The proposed route and mode of construction of the improvement will improve water management and development in the county in which the district is located to the advantage of lands located in it.~~
- ~~(5) The proposed improvement will aid lands in the area by promoting the economic, environmental, or social development of the area.~~

~~(C) When, in the opinion of the board of county commissioners, it is necessary for the board to acquire real property or a right-of-way or other easement for a conservation works of an improvement project under this chapter, the board may make the acquisition through purchase or voluntary transfer, or the board may appropriate the real property or right-of-way or other easement in accordance with sections 163.01 to 163.62 of the Revised Code.~~

~~(D) If the board approves construction of the a petition for an improvement, the county engineer shall file with the county recorder a all of the following:~~

- ~~(1) A property plat showing the general landowners of record and parcel numbers along the improvement;~~
- ~~(2) The location of the improvement and a statement describing the dimensions;~~
- ~~(3) The width of any permanent easement that is necessary for maintenance of the improvement granted in section 6137.12 of the Revised Code;~~
- ~~(4) An affidavit listing the landowners of record, complete property descriptions, and parcel numbers subject to the permanent easement. The county engineer shall note the property plat in the affidavit.~~

~~The county engineer shall include the permanent easement in the county's geographic information systems or other mapping system, if available. In~~

In the case of an improvement that is an open ditch, provisions that govern the permanent easement for maintenance of the ditch that are established in section 6137.12 of the Revised Code shall apply.

(E) A board of county commissioners shall follow competitive bidding requirements in sections 307.86 to 307.91 of the Revised Code, except that in constructing an improvement. However, the board may designate the board of supervisors of a soil and water conservation district as the contracting agency and it. The board of supervisors shall follow division (H) of section 940.06 of the Revised Code, or except that if. If the improvement is being undertaken through the joint efforts and cooperation of the board of county commissioners or board of supervisors and another state or federal agency, and if the state or federal regulations or procedures are in conflict with those sections with respect to the procedures for the preparing of contracts, the issuing of bids, the making of awards, and generally the administering of the contracts, the board of county commissioners or board of supervisors may adopt the state or federal regulations or procedures in those areas where conflict exists and proceed with the improvement in accordance with the requirements of the state or federal regulations or procedures.

(F) If a board of county commissioners does not approve a petition for a proposed improvement, the applicable board of supervisors may revise the proposed improvement and submit the revision to the board of county commissioners for reconsideration of the petition.

Sec. 940.33 940.32. (A) Following receipt of a certification made by the supervisors of a soil and water conservation district pursuant to section 940.25 of the Revised Code together with receipt of all plans, specifications, and estimates submitted under that section and upon completion of a schedule of estimated assessments in accordance with section 940.30 of the Revised Code, If the board of county commissioners may approves a petition under section 940.31 of the Revised Code, the board shall adopt a resolution levying upon the property within the project area an to be benefited by an improvement a uniform or varied assessment at a uniform or varied rate based upon the benefit to the area certified by the supervisors, as necessary to pay the cost of construction of the improvement not otherwise funded and to repay advances made for purposes of the improvement from the fund created by section 940.16 of the Revised Code. In adopting the resolution, the board shall take into consideration the estimated assessments prepared by the board of supervisors of the soil and water conservation district under section 940.27 of the Revised Code. The board of county commissioners shall direct the person or authority preparing assessments to give primary consideration, in determining a parcel's estimated assessments relating to the disposal of water, to the potential increase in productivity that the parcel may experience as a result of the improvement and also to give consideration to the amount of water disposed of, the location of the property relative to the project, the value of the project to the watershed, and benefits. The part of the assessment that is found to benefit state, county, or township roads or highways or municipal streets shall be assessed against the state, county, township, or municipal corporation, respectively, payable from motor vehicle revenues. The part of the assessment that is found to benefit property owned by any public corporation, any political subdivision of the state, or the state shall be assessed against the public corporation, the political subdivision, or the state and shall be paid out of the general funds or motor vehicle revenues of the public corporation, the political subdivision of the state, or the state, except as otherwise provided by law.

~~(B) The assessment shall be certified to the county auditor and by the county auditor to the county treasurer. The collection of the assessment shall conform in all matters to Chapter 323. of the Revised Code.~~

~~(C) Any land owned and managed by the department of natural resources for wildlife, recreation, nature preserve, or forestry purposes is exempt from assessments if the director of natural resources determines that the land derives no benefit from the improvement. In making such a determination, the director shall consider the purposes for which the land is owned and managed and any relevant articles of dedication or existing management plans for the land. If the director determines that the land derives no benefit from the improvement, the director shall notify the board of county commissioners, within thirty days after receiving the assessment notification required by this section, indicating that the director has determined that the land is to be exempt and explaining the specific reason for making this determination. The board of county commissioners, within thirty days after receiving the director's exemption notification, may appeal the determination to the court of common pleas. If the court of common pleas finds in favor of the board of county commissioners, the department of natural resources shall pay all court costs and legal fees.~~

~~(D)(1)(B) The board of county commissioners shall give notice by first class mail to every public and private property owner whose property is subject to assessment, at the tax mailing or other known address of the owner. The notice shall contain a all of the following:~~

~~(1) A statement of the amount to be assessed against the property of the addressee, a;~~

~~(2) A description of the method used to determine the necessity for and the amount of the proposed assessment, a;~~

~~(3) A description of any easement on the property that is necessary for purposes of the improvement, and a statement that the addressee may file an objection in writing at the office of the board of county commissioners within thirty days after the mailing of notice. If;~~

~~(4) A statement that an owner may file written exceptions to the amount of the assessments with the clerk of the board of county commissioners within thirty days of the date of the notice.~~

~~(C) If the residence of any owner cannot be ascertained, or if any mailed notice is returned undelivered, the board shall publish the notice to all such owners in a newspaper of general circulation within the project area to be benefited by the improvement, once each week for three weeks or as provided in section 7.16 of the Revised Code. The notice shall include the information contained in the mailed notice, but shall state that the owner may file an objection in writing at the office of the board of county commissioners within thirty days after the last publication of the notice.~~

~~(2) Upon receipt of objections as provided in this section, the board shall proceed within thirty days to hold a final hearing on the objections by fixing a date and giving notice by first class mail to the objectors at the address provided in filing the objection. If any mailed notice is returned undelivered, the board shall give due notice to the objectors in a newspaper of general circulation in the project area or as provided in section 7.16 of the Revised Code, stating the time, place, and purpose of the hearing. Upon hearing the objectors, the board may adopt a resolution amending and approving the final schedule of assessments and shall enter it in the journal.~~

~~(3) Any owner whose objection is not allowed may appeal within thirty days to the court of common pleas of the county in which the property is located.~~

~~(4) The board of county commissioners shall make an order approving the levying of the~~

~~assessment and shall proceed under section 6131.23 of the Revised Code after one of the following has occurred, as applicable:~~

~~(a) Final notice is provided by mail or publication.~~

~~(b) The imposition of assessments is upheld in the final disposition of an appeal that is filed pursuant to division (D)(3) of this section.~~

~~(c) The resolution levying the assessments is approved in a referendum that is held pursuant to section 305.31 of the Revised Code.~~

~~(5) The (D) If an owner files an exception to the estimated assessment, the board, within thirty days of the date of the filing, shall establish a date and time for hearing the exception to the estimated assessments. The board may hear each owner's exception in an individual hearing or hear all exceptions in a single hearing. Not less than fourteen days prior to the hearing date, the clerk of the board shall notify each owner who filed an exception of the date and time of the owner's exception hearing. Upon hearing the objector's exceptions, the board may adopt a resolution amending and approving the final schedule of estimated assessments and shall enter it in the journal.~~

~~If the board amends the final schedule of estimated assessments after hearing exceptions, the clerk of the board shall send by certified or first class mail a written notice of the revised final schedule of estimated assessments to all owners within the area to be benefited by the improvement. The notice shall contain both of the following:~~

~~(1) The amount of the final estimated assessment for the owner's property;~~

~~(2) A statement that an owner may appeal the final estimated assessment to the applicable court of common pleas pursuant to section 940.38 of the Revised Code within twenty-one days of the notice of final estimated assessment.~~

~~(E) The board shall certify the schedule of final estimated assessments to the county auditor, who shall certify the assessments to the county treasurer. The collection of the assessments shall be made in accordance with Chapter 323. of the Revised Code.~~

~~(F) The county treasurer shall deposit the proceeds of the assessment in the fund designated by the board and shall report to the county auditor the amount of money from the assessment that is collected by the treasurer. Moneys shall be expended from the fund for purposes of the improvement.~~

~~(E)-(G) Any moneys collected in excess of the amount needed for construction of the improvement and the subsequent first year's maintenance may be maintained in a fund to be used for maintenance of the improvement. In any year subsequent to a year in which an assessment for construction of an improvement levied under this section has been collected, and upon determination by the board of county commissioners that funds are not otherwise available for maintenance or repair of the improvement, the board shall levy on the property within the ~~project~~ area to be benefited by the improvement an assessment for maintenance at a uniform percentage of all construction costs based upon the assessment schedule used in determining the construction assessment. The assessment is not subject to the provisions concerning notice and petition contained in this section. An assessment for maintenance shall not be levied in any year in which the unencumbered balance of funds available for maintenance of the improvement exceeds twenty per cent of the cost of construction of the improvement, except that the board may adjust the level of assessment within the twenty per cent limitation, or suspend temporarily the levying of an assessment, for maintenance purposes as maintenance funds are needed.~~



(H) For the purpose of levying an assessment for maintenance of an improvement, a board may use the procedures established in Chapter 6137. of the Revised Code regarding maintenance of improvements as defined in section 6131.01 of the Revised Code in lieu of using the procedures established under this section.

~~(F)-(J)~~ The board of county commissioners may issue bonds and notes as authorized by section 131.23 or 133.17 of the Revised Code.

~~Sec. 940.34~~940.33. (A) A board of county commissioners may declare by resolution that it is necessary to levy a tax upon the property within the ~~project~~area to be benefited by an improvement in order to pay the costs of the improvement not otherwise funded.

~~Such~~The resolution shall specify the all of the following:

- ~~(1) The rate that it is necessary to levy, the purpose thereof, and the;~~  
(1) The rate that it is necessary to levy;
- ~~(2) The purpose of the tax levy;~~  
(2) The purpose of the tax levy;
- ~~(3) The number of years during which such the increase shall be is in effect, which levy may include a levy upon the duplicate of the current year.~~  
(3) The number of years during which such the increase shall be is in effect, which levy may include a levy upon the duplicate of the current year.

(B) A copy of the resolution shall be certified to the board of elections for the county not less than ninety days before the general election in any year and the board shall submit the proposal to the electors within the ~~project~~area to be benefited by an improvement at the succeeding November election in accordance with section 5705.25 of the Revised Code. For purposes of that section, the subdivision is the ~~project~~area to be benefited by an improvement.

(C) If the per cent required for approval of a levy as set forth in section 5705.26 of the Revised Code vote in favor thereof, the board of county commissioners may levy a tax within the ~~project~~area to be benefited by an improvement, outside the ten-mill limitation, during the period and for the purpose stated in the resolution, or at any less rate or for any less number of years.

(D) The board may issue bonds and notes in anticipation of the collection of taxes levied under this section, and notes in anticipation of the issuance of bonds.

Sec. 940.34. (A) Upon receiving a petition pursuant to section 940.19 of the Revised Code for a proposed improvement that would be located in two or more adjoining soil and water conservation districts, the board of supervisors of the adjoining districts shall, with approval of the Ohio soil and water conservation commission, create a joint board of supervisors. Each district shall have the same number of supervisors on the joint board. However, if the membership of the joint board would be an even number, an additional supervisor from the lead county shall be designated.

(B) A joint board of supervisors shall exercise the same powers, execute the same duties, and follow the same procedures in connection with an improvement under this chapter as the board of supervisors of a single soil and water conservation district with the following conditions:

(1) For purposes of making a preliminary determination to accept or reject a petition in accordance with section 940.19 of the Revised Code, the joint board shall make the determination within sixty days of the approval of the creation of the joint board.

(2) For purposes of a petition, the joint board shall do both of the following:

(a) Send the petition and accompanying information to the board of county commissioners of the lead county; and

(b) Send notification of the need for the creation of a joint board of county commissioners under section 940.35 of the Revised Code to the board of county commissioners of each county in

the area to be benefited by the proposed improvement.

(C) Upon the creation of a joint board of supervisors, the elected officials in the lead county, including the engineer, recorder, auditor, prosecutor, treasurer, judges, and clerk of the board of county commissioners, shall serve as the administrative officers for the joint board of supervisors.

~~Sec. 940.31 940.35. The boards of county commissioners of all the counties containing any of the territory included in the project area, if all such counties have approved construction of an improvement under section 940.29 of the Revised Code, are a joint board of county commissioners for the improvement. (A) If a proposed improvement would affect more than one county, the board of county commissioners from each of the counties that would be affected by the proposed improvement shall meet on a date fixed by the clerk of the board of county commissioners of the lead county. The boards shall meet in the lead county to organize a joint board of county commissioners and elect a president, which shall be the first order of business at the hearing.~~

(B) A joint board of county commissioners may do all the things that a board of county commissioners may do in connection with the improvement and shall proceed as if it were a board of county commissioners representing a county that included all the territory within the project area shall exercise the same powers, execute the same duties, and follow the same procedures in connection with an improvement under this chapter as the board of county commissioners of a single county.

~~The joint board may agree to apportion any cost of the improvement, or expenses incurred in connection therewith, not paid by assessments or taxes levied for the improvement, or funds other than county funds, among the participating counties.~~

~~The joint board shall elect one of its members president and designate a clerk of one of the boards of county commissioners of the participating counties as clerk of the joint board. A majority of the county commissioners constituting the joint board constitutes a quorum. All decisions of the joint board shall be made by a majority vote of the county commissioners constituting the joint board.~~

~~For the purpose of bringing a referendum petition against a soil and water conservation project under section 305.31 of the Revised Code, a resolution adopted by a joint board of county commissioners shall be considered to be a resolution adopted by the board of county commissioners of each county in the project area. The electors of any county in the project area may file a petition for referendum under that section against a resolution adopted by the joint board of county commissioners as if it had been adopted by the board of county commissioners for that county. The referendum shall be conducted only in the county in which the referendum petition was filed. The electors of any county in the project area in which no referendum petition was filed shall not be eligible to vote in the referendum, and the outcome of a referendum shall have effect only in the county in which the referendum was held. Any county in the project area in which a referendum is not held remains subject to the provisions of the resolution adopted by the joint board of county commissioners for the soil and water conservation district.~~

(C) The clerk of the board of county commissioners of the lead county shall do all of the following:

(1) Act as clerk and administrator of the joint board;

(2) Enter the findings of the joint board in the journal of the board of county commissioners

of the lead county:

(3) Make the final record of the improvement in the lead county;

(4) Provide copies of all proceedings to the clerks of the boards of all affected counties.

(D) A majority of the county commissioners constituting the joint board shall constitute a quorum. All decisions of the joint board shall be made by a majority vote of the quorum present at a meeting of the joint board.

(E) The director of natural resources shall be an ex officio member of the joint board and may participate, in person or through a designated representative, in deliberations and proceedings of the joint board. The director shall have no vote on any proceedings of the joint board except in the case of a tie for or against an improvement. If the director or the director's designee is not present at the proceeding, the director shall review the proceedings and cast the deciding vote within thirty days of the proceeding. A failure to cast a vote for or against the improvement within thirty days constitutes an affirmative vote for the improvement. The clerk shall record the final resolution of the tie.

(F) Upon the creation of a joint board of county commissioners, the elected officials in the lead county, including the engineer, recorder, auditor, prosecutor, treasurer, judges, and clerk of the board of county commissioners, shall serve as the administrative officers for the joint board of county commissioners.

~~Sec. 940.32 940.36. The county auditor and county treasurer of one of the counties represented by a joint board of county commissioners under section 940.31 of the Revised Code, to be designated by the joint board, shall ex officio become the fiscal agents of all the participating counties. Such (A) The auditor of the lead county shall certify to the auditor of the other counties a schedule of any taxes or assessments to be levied for the improvement, and the auditor of such other county immediately shall proceed forthwith to place such tax or assessment upon the duplicates. Taxes or assessments so certified for collection to an auditor of another county are a lien on the land within such county from the date such certificate is received by the auditor of such other county. The~~

~~(B) The treasurer of each county shall proceed to collect the same any taxes or assessments levied for the improvement pursuant to the orders made in the proceedings of the joint board of county commissioners, and such taxes or assessments when collected shall be paid to the treasurer for the joint board. The~~

~~(C) The auditor and treasurer of the lead county shall receive and account for such funds any taxes or assessments levied for the improvement in the same manner as they would for taxes or assessments collected within their county. The treasurer and auditor of the lead county with their bondspersons are liable on their official bonds for any misappropriation of such funds. All warrants for the payment of costs in connection with the improvement shall be drawn by the auditor designated under this section of the lead county, on the treasurer of the lead county, payable out of the fund designated by the joint board to receive moneys for the improvement.~~

~~Sec. 940.35 940.37. The board of county commissioners, or, if a joint board of county commissioners has been created under section 940.31-940.35 of the Revised Code, the joint board, shall maintain the works of improvement improvements constructed by the board for a soil and water conservation district under this chapter. For that purpose, the board of county commissioners or joint board may use procedures and requirements established in sections 6137.08 to 6137.14 Chapter 6137. of the Revised Code and may contract with or authorize the board of supervisors or joint board~~

of supervisors of a soil and water conservation district to perform maintenance of such works of improvement.

Sec. 940.38. Any affected landowner may appeal to the appropriate court of common pleas any action or determination of a board of supervisors, joint board of supervisors, board of county commissioners, or joint board of county commissioners under this chapter. The affected landowner shall make the appeal within thirty days of the date of the action or determination. The appeal may be based on, but is not limited to, any of the following questions:

(A) Is the improvement necessary?

(B) Will the improvement be conducive to the public welfare?

(C) Is the cost of the improvement greater than the benefits conferred?

(D) Is the route, termini, or mode of construction the best to accomplish the purpose of the improvement?

(E) Are the assessments levied according to benefits?

(F) Is the award for compensation or damages just?

Sec. 940.39. (A) For purposes of this section, references to a "board of supervisors of a soil and water conservation district" or a "board" includes a joint board of supervisors of a soil and water conservation district.

(B) Notwithstanding any other provision of law to the contrary, a board of supervisors of a soil and water conservation district, when practicable, may conduct meetings by video conference or, if video conference is not available, by teleconference. The board of supervisors shall make provisions for public attendance at any location involved in such a meeting. The board shall establish the board's main office or board room as the primary meeting location for the video conference or teleconference. The conference shall be held at that location in an open meeting at which the public is allowed to attend.

(C) Before convening a meeting of a board of supervisors by video conference or by teleconference, designated staff shall send, via electronic mail, facsimile, or United States postal service, a copy of meeting-related documents to each member of the board.

(D) The minutes of each drainage improvement meeting shall specify who was attending by teleconference, who was attending by video conference, and who was physically present. Any vote taken in a meeting held by teleconference that is not unanimous shall be recorded as a roll call vote.

(E) Nothing in section 121.22 of the Revised Code prohibits a board of supervisors from conducting a meeting in a manner authorized by this section.

Sec. 6131.01. As used in sections 6131.01 to 6131.64 of the Revised Code:

(A) "Owner" means any owner of any right, title, estate, or interest in or to any real property and includes persons, partnerships, associations, private corporations, public corporations, boards of township trustees, boards of education of school districts, the mayor or legislative authority of a municipal corporation, the director of any department, office, or institution of the state, and the trustees of any state, county, or municipal public institution. "Owner" also includes any public corporation and the director of any department, office, or institution of the state affected by an improvement but not owning any right, title, estate, or interest in or to any real property.

(B) "Land" includes any estate or interest, of any nature or kind, in or to real property, or any easement in or to real property, or any right to the use of real property, and all structures or fixtures

attached to real property, including but not restricted to all railroads, roads, electric railroads, street railroads, streets and street improvements, telephone, telegraph, and transmission lines, underground cables, gas, sewage, and water systems, pipe lines and rights of way of public service corporations, and all other real property whether public or private.

(C) "Improvement" includes:

(1) The location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway;

(2) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;

(3) A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water;

(4) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run;

(5) The vacating of a ditch or drain.

(D) "Person" means natural person, firm, partnership, association, or corporation, other than public corporations.

(E) "Public corporation" or "political subdivision" means counties, townships, municipal corporations, school districts, park districts, turnpikes, toll bridges, conservancy districts, and all other governmental agencies clothed with the power of levying general or special taxes.

(F)(1) "Benefit" or "benefits," except as ordered in section 6131.31 of the Revised Code, means advantages to land and owners, to public corporations as entities, and to the state resulting from drainage, conservation, control and management of water, and environmental, wildlife, and recreational improvements. Factors relevant to whether such advantages result include:

~~(1)(a)~~ The watershed or entire land area drained or affected by the improvement;

~~(2)(b)~~ The total volume of water draining into or through the improvement and the amount of water contributed by each land owner;

~~(3)(c)~~ The use to be made of the improvement by any owner, public corporation, or the state.

(2) "Benefit" or "benefits" includes, but is not limited to, any or all of the following factors:  
elimination

(a) Elimination or reduction of damage from ~~flood flooding~~; ~~removal~~

(b) Removal of water conditions that jeopardize public health, safety, or welfare; ~~increased~~

(c) Increased value of land resulting from ~~the-an~~ improvement; ~~use~~

(d) The use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other incidental purpose ~~incidental thereto~~; ~~providing~~

(e) Providing an outlet for the accelerated runoff from artificial drainage ~~whenever the-if~~ a stream, watercourse, channel, or ditch that is under improvement is called upon to discharge functions for which it was not designed ~~by nature; it being the legislative intent that uplands~~. Uplands that have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other ~~man-made causes~~ human methods shall be considered ~~as-to~~ be benefited by an improvement that is required to dispose of the accelerated flow of water from the

uplands.

(G) "Environmentally significant areas" mean natural land or water areas that in some degree retain or have reestablished their natural character or have other features of scientific or educational interest such as rare or endangered plant and animal populations or geologic, scenic, or other natural features and, because of their values and functions, contribute to the community's general welfare.

(H) "Days" means calendar days.

Sec. 6131.04. (A) Any owner may file a petition for the construction of a drainage improvement with the clerk of the board of county commissioners of the county in which is located a part of the land that is averred proposed to be benefited by benefit from the construction of a proposed improvement. Prior to filing a petition, the petitioner shall consult with the county engineer of the county in which the petition will be filed to discuss the proposed drainage improvement and to determine the proper forms and procedures for filing the petition.

(B) The petition shall state that the construction of the improvement is necessary, will benefit the petitioner, and will be conducive to the public welfare; shall state the all of the following:

(1) The nature of the work petitioned for; and may ask to locate, clean, remove, which may include locating, cleaning, removing obstructions from, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, wall constructing, reconstructing, straightening, deepening, widening, altering, boxing, tiling, filling, walling, or arch arching any ditch, drain, watercourse, floodway, creek, run, or river or to change; changing the course, location, or terminus thereof; or may ask to construct constructing a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water. The petition shall state the;

(2) The course and termini of the proposed improvement and the branches, spurs, or laterals, if any are petitioned for. Except as ordered under section 6131.31 of the Revised Code, the petition shall state that;

(3) That the construction of the improvement is necessary and will benefit the petitioner;

(4) That all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land. The petition shall contain a, except as ordered under an appeal filed in accordance with section 6131.31 of the Revised Code;

(5) A list of the names and addresses, where known, of all the owners of the land that the petitioner or the county engineer claims will be benefited or damaged by the construction of the proposed improvement, as determined by the county engineer. The petition shall be signed by one

(C) One or more owners must sign the petition as the petitioners. If the petitioner is a public corporation or the state, the petition shall be signed by its authorized representative must sign the petition.

(D) If the petitioner is the county, the petition shall must be filed with the clerk of the court of common pleas without the bond required under section 6131.06 of the Revised Code, the matters in the petition shall be heard by the common pleas court as if the petition had come to the court on appeal, and the clerk and the court shall do all things that sections 6131.01 to 6131.64 of the Revised Code provide that the county commissioners shall do. The court of common pleas may appoint a board of arbitrators to assume the duties of the judge. The board shall be comprised of three disinterested persons chosen by the judge, who owners in the county and shall designate one of the

persons to be ~~chairman chairperson~~. ~~A decision of the board shall require approval of a majority of the members~~ The appointed board shall hear and act on the petition in accordance with this chapter. Either party may appeal the board's decision to the court of common pleas, ~~which shall decide the case on the record of arbitration.~~

Sec. 6131.05. ~~The petition referred to in section 6131.04 of the Revised Code may be amended upon the written application of any~~ (A) Any benefiting owner filed may file an amendment to a petition for a drainage improvement that expands the length of the proposed improvement, provided that such amendment does not expand the area to be benefited by the proposed improvement. An owner shall file the amendment not more than twenty-one days after the date of the view. Such owner shall not propose an amendment that expands either the area or number of parcels to be benefited by the proposed improvement, but shall file a new petition regarding the proposal in accordance with section 6131.04 of the Revised Code.

(B) A benefiting owner shall file an amendment with the clerk of the board of county commissioners and upon the allowance of the application by the board of county commissioners, by an order entered on its journal.

~~The petition may be amended while the proceedings are pending on appeal in the court of common pleas, pursuant to the rules and laws relating to civil procedure. If the petitioner is the county, the application for amendment shall be filed with the clerk of the court of common pleas and shall be heard pursuant to the rules and laws relating to civil procedure. Any written application for amendment of the petition shall include the information required for the petition in section 6131.04 of the Revised Code, including names and addresses of the additional owners that the petitioner seeking amendment or the county engineer claims will be benefited or damaged by the proposed improvement. Any application, remonstrance, statement, report, or schedule filed in any improvement proceedings may be amended as a petition may be amended, as provided in this section not more than twenty-one days after the view required by section 6131.07 of the Revised Code and shall include the information required by section 6131.04 of the Revised Code along with the amendment.~~

(C) If the petition was filed by the county under division (D) of section 6131.04 of the Revised Code, any proposed amendment to the petition shall be filed with the clerk of the court of common pleas or with the board appointed under that division. If the amendment is filed with the clerk of the court of common pleas, the court shall hear the amendment pursuant to the rules and laws relating to civil procedure.

Sec. 6131.06. ~~(A) The petitioner shall file with the petition referred to in section 6131.04 of the Revised Code a bond in the penat sum of one thousand five hundred dollars, plus the sum of two five dollars for each parcel of land in excess of two hundred parcels averred in the petition to be benefited, with at least two sureties who are freeholders of the county, or with surety by a surety company authorized to do business in this state, or with cash that are listed in the petition as lands that will benefit from the improvement.~~

(B) The bond shall be made payable to the county, to the credit of the general drainage improvement fund or a special fund created for the proposed improvement, and conditioned to pay the cost of notices, plus any other incidental expenses, except the costs incurred by the engineer in making his preliminary reports all costs associated in preparing for the view and first hearing if the

~~prayer of the petition is not granted or if the petition is for any cause dismissed unless the board of county commissioners decides to pay the engineer's costs from the petitioners' bond in accordance with section 6131.09 of the Revised Code.~~

~~(C) The bond clerk of the board of county commissioners shall be released release the bond at the expiration of the twenty-one day thirty-day appeal period provided for in section 6131.25 of the Revised Code after an order of to proceed with the project by the commissioners board at the first hearing or at the termination of the appeal.~~

~~Sec. 6131.57 6131.061. (A) The clerk of the board of county commissioners and the county engineer shall maintain a permanent file for the proposed improvement containing a record of the petition, the applications and remonstrances filed, the amendments, comments, notices, proceedings, resolutions, orders made by the board, the preliminary estimates, and preliminary report of the county engineer, the reports of review by the director of natural resources, the director of transportation, and the directors of any conservancy district, the reports of the engineer as to the construction of the improvement, and such other matter as is proper for any other record regarding the proposed improvement that is filed with the board. A record of the assessments levied, pursuant to the order of the board, as corrected after the completion of the contract, and the schedules of payments for compensation and damages shall be kept by the~~

~~(B) The county auditor engineer shall maintain a file for the proposed improvement that contains a record of the petition, amendments to the petition, all reports, estimates, surveys, maps, plans, drawings, schedules, and other documents prepared for the proposed improvement by the engineer or the engineer's designee, and any reports of the director of natural resources, director of transportation, and directors of any conservancy districts. The clerk of~~

~~(C) After the final hearing of the board of county commissioners shall, after the final hearing of the board of county commissioners or after the final judgment, order, or decree has been rendered upon any appeal, the clerk of the board of county commissioners shall file with the county engineer all maps, profiles, and plans of the improvement, which shall be filed together with an annual record of maintenance and repair, and may transfer to, the county engineer the file maintained pursuant to division (A) of this section. Upon receiving the file, the county engineer shall maintain the file as the permanent project file, together with an annual record of maintenance and repairs for the improvement.~~

~~(D) The county auditor shall maintain a record of the estimated and final assessments levied for the improvement, and the schedules of payments for compensation and damages.~~

~~Sec. 6131.07. (A) When the a petition authorized by is filed under section 6131.04 of the Revised Code is filed with the clerk of the board of county commissioners, the clerk shall give notice of the petition to the board of county commissioners and to the county engineer.~~

~~(B) The board of county commissioners shall, by an order upon its journal, fix do both of the following:~~

~~(1) Establish a date and hour for the a view of the proposed improvement, which shall be not fewer than twenty-five nor more than ninety between thirty and one hundred twenty days after the date on which the petition was filed with the clerk. The board shall designate a convenient place near the proposed improvement at which the view shall start. The board shall also fix;~~

~~(2) Establish a date and hour, not fewer than ten nor more than between thirty and ninety~~



days after the date set for the view, when it will hold its first hearing ~~at a place designated by it. As soon as the dates for the view and first hearing have been fixed by the board, the clerk shall prepare and mail, at on the petition.~~

(C) At least ~~twenty~~ twenty-one days prior to the date set for the view, the clerk shall send a written notice to the owners named in the petition and of legal record on the date of its filing, setting forth the pendency, substance, and prayer of the petition, . The clerk shall include all of the following in the notice:

(1) The date, time, and location for the view and the first hearing;

(2) A description of the proposed improvement and its location as stated in the petition, a map indicating the location of the proposed improvement or information on where to access such map, and an explanation of how to access additional information or ask questions about the proposed improvement;

(3) A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land, ~~and the date, hour, and starting place of the view and the date, hour, and location of the first hearing. For each proposed improvement, all individual notices shall be sent by the same type of mail, either certified mail, return receipt requested, or first-class mail in a five-day return envelope. Whichever method the board chooses, the;~~

(4) A statement that an owner may file, not more than twenty-one days after the date of the view, an amendment to the petition that expands the length of the proposed improvement, provided that such amendment does not expand the area to be benefited by the proposed improvement;

(5) A statement that an owner receiving the notice may comment on the proposed improvement in writing before or in person at the public hearings on the petition;

(6) The address at which to file an amendment to the petition or submit written comments on the proposed amendment or the petition.

(D) The clerk shall notify all owners that are adjacent to the proposed improvement by certified mail and shall notify all other owners by certified mail or first class mailings. The words "Legal Notice of Proposed Drainage Improvement" shall be printed in plain view on the face of the envelope. When the owner is not a natural person, the notice shall be mailed to its chief officer or managing agent at the usual place of business in the county. If such an owner is a foreign or domestic railroad company, regardless of whether the charter thereof prescribes the manner or place of service of process thereon, the notice shall be addressed to the property owner of record as listed by the county auditor on the general tax list. If such an owner other than a railroad company does not maintain a regular place of business in the county, then the notice shall be mailed to the nearest regular place of business of such an owner. ~~The~~

(E) ~~The clerk shall cause to be published~~ publish a legal notice in at least one newspaper of general circulation in the area affected by the proposed improvement, stating the name and number, if any, of the proposed improvement, the location and nature of the work proposed in the petition, and the date, time, and location of the view and first hearing. If the individual notices are sent by certified mail, ~~the publication-clerk shall be publish the notice~~ in one issue of such newspaper, and shall not ~~be publish the notice~~ less than thirteen days prior to the date of the view. If the individual notices are sent by first-class mail in five-day return envelopes, ~~the publication of this-clerk shall publish the newspaper notice shall be made~~ in two issues of the newspaper, and the notice shall include a list of

the names of all addressees whose individual notices were undelivered. The clerk shall publish the first such publication shall not be less than thirteen days prior to the date of the view, and the second publication shall not be less than six days prior to the date of the view. The publication shall serve as public notice to all owners of the pendency of the improvement whether or not they were individually named and notified.

Proof of notice by publication shall be verified by affidavit of the printer or other person knowing the fact, and the clerk of the board of county commissioners shall prepare a certificate showing the service of the notices by mail, both of which shall be filed with the clerk of the board of county commissioners on or before the day of the first hearing. Notices returned undelivered and receipts shall be kept on file by the clerk as part of the permanent record of the improvement.

Sec. 6131.08. ~~Owners~~ Any owner who have has not joined in ~~the a~~ a petition authorized by filed in accordance with section 6131.04 of the Revised Code ~~and who are in favor of the improvement may file applications requesting that the improvement be granted and state their reasons therefor. Owners who are opposed to the improvement may file remonstrances against the granting of the improvement and state their reasons therefor. The applications or remonstrances may be filed with the clerk of the board of county commissioners may comment on the proposed improvement at any time before a final order on the petition is made by the board of county commissioners confirming the assessments and ordering the letting of the contracts for the construction of the improvement or before a final order is made dismissing the petition. Comments may be made in person at the public hearings on the petition or by filing written comments with the clerk of the board of county commissioners.~~

Sec. 6131.09. ~~When notified of the filing of a petition authorized by section 6131.04 (A) Upon receiving the notice required under division (A) of section 6131.07 of the Revised Code, the county engineer shall prepare a preliminary estimate of the cost of report on the proposed improvement. The engineer shall file at the first hearing, as a guide to the commissioners and the petitioners, a preliminary report including his, which shall include all of the following:~~

(1) A preliminary estimate of the cost, his comment of the proposed improvement;  
 (2) Comments on the feasibility of the project, and a;  
 (3) A statement of his the engineer's opinion as to whether benefits from the project are likely to exceed the estimated cost. The preliminary report shall;

(4) A list all of factors apparent to the engineer, both favorable and unfavorable to the proposed improvement, so that the petitioners may be informed as to what is involved.

(B) In addition to reporting on the improvement as petitioned, the engineer may submit alternate proposals to accomplish the prayer-intent of the petition.

(C) The county commissioners may require the county engineer to file any additional preliminary reports, of whatever nature, that in the opinion of the board will serve as a guide to the board and the petitioners in deciding whether to proceed with the proposed improvement.

(D) The costs incurred by the engineer in making preliminary reports may be paid from the bond of the petitioners if the petition is dismissed at the first hearing, and any amount in excess of the bond shall be paid from county funds. If the engineer's costs are not paid from the petitioners' bond, they shall be paid from county funds.

Sec. 6131.10. ~~The board of county commissioners and the (A)~~ On the date established for the

~~view of a proposed improvement, the county engineer or its designated representative shall meet at the designated place near present an overview of the proposed improvement on the day of, using methods and means that the board of county commissioners determines will adequately inform those attending the view fixed as provided in section 6131.07 of the Revised Code and hear the proof offered at that time by any owner affected by about the proposed improvement's location and the drainage issues intended to be addressed by the proposed improvement. The board and the county engineer or his authorized representative shall go over and along the line of the proposed improvement and each branch, lateral, or spur mentioned in the petition or in any application filed therefor. The board shall adjourn the view from day to day, or a longer period, until the view is completed. Upon completing the view, the board shall adjourn the further hearing to the place designated by the board, to the day and hour fixed in the notice given. On the day so fixed for the first hearing on the petition, the board shall take up the further hearing on the petition and on the applications or remonstrances filed. The board shall hear the preliminary report of the county engineer as provided in section 6131.09 of the Revised Code and shall hear any evidence offered by any owner for or against the granting of the proposed improvement or for or against the granting of any laterals, branches, spurs, or change of route, course, termini, or manner of construction described in the petition or in any application filed therefor. If any applications for branches, laterals, spurs, or change of route or course are filed after the view, the board shall fix a time to view and shall view them. The first hearing may be adjourned from day to day, or for a longer time that may be reasonable, so that all interested owners may have an opportunity to be heard for or against~~

(B) Upon a request made by a commissioner or an owner in the area to be benefited by the proposed improvement, the board of county commissioners shall recess the view and reconvene it at a site along the proposed improvement for the purpose of gaining additional information about the drainage issues intended to be addressed by the proposed improvement.

(C) If the area to be viewed is extensive, the board of commissioners may conduct the view on more than one day and may adjourn from day to day, or a longer period, until the view is completed.

Sec. 6131.101. (A) At the first hearing on a petition for a proposed improvement, the board of county commissioners shall do both of the following:

(1) Hear the preliminary report of the county engineer required under section 6131.09 of the Revised Code;

(2) Hear any evidence offered by any owner for or against the granting of the proposed improvement or for or against the granting of any laterals, branches, spurs, or change of route, course, termini, or manner of construction described in the petition or in any amendment.

(B) If necessary, the board of county commissioners may recess and continue the hearing on subsequent days as may be reasonable to consider additional information about the proposed improvement or so that all interested owners may have an opportunity to comment on the proposed improvement.

(C) At the conclusion of the first hearing, the board shall vote to determine whether to proceed with the project survey and design or to dismiss the petition, taking into consideration the petition, the preliminary report, and comments on the proposed improvement.

Sec. 6131.11. (A) If the board of county commissioners, at finds at the conclusion of the first

hearing, ~~finds for a proposed improvement~~ that a proposed improvement is not necessary, ~~or finds that a proposed improvement~~ will not be conducive to the public welfare, or ~~finds that the estimated cost of a~~ the proposed improvement will exceed the benefits to be derived if it is constructed, the board shall dismiss the petition for the proposed improvement and enter its findings upon its journal.

(B) Any owner who is affected by the order of dismissal may appeal to the court of common pleas of the county in which the petition was filed, as provided in sections 6131.12 to 6131.64 of the Revised Code. If no appeal is filed within ~~twenty-one~~ thirty days, pursuant to section 6131.25 of the Revised Code, the ~~petitioner bond shall pay cover~~ all the costs incurred in the proceedings ~~and the~~. Any remaining funds from the bond shall be released returned to the petitioner.

(C) An order issued by the board under this section is effective on the day of the hearing at which the board issued it.

Sec. 6131.12. ~~If~~ (A) At the conclusion of the first hearing on a petition for a proposed improvement, the board of county commissioners may decide to proceed with the project survey and design for a proposed improvement if the board finds that all of the following:

- (1) That a proposed improvement is necessary and that it will be;
- (2) That the proposed improvement is conducive to the public welfare, and if the board is;
- (3) That it is reasonably certain that the cost thereof benefits of the proposed improvement will be less than the benefits, it may grant the prayer of the petition. When deciding whether to grant the prayer of the petition, the outweigh its costs.

(B) ~~The~~ board shall give consideration to the protection of environmentally significant areas when those areas could be adversely affected by the construction of the proposed improvement and, if necessary, to alternative plans providing for that protection as well as for construction of the proposed improvement. ~~Upon granting the prayer of the~~

(C) After deciding to proceed with a petition for a proposed improvement, the board shall determine do all of the following:

- (1) Determine the route and termini of the proposed improvement and of the branches, spurs, and laterals thereof and the manner of constructing the same. ~~On any petition for any improvement of a ditch, drain, watercourse, or levee, the~~ The board, without request or application, may by its order change either terminus of the proposed improvement or the route thereof if it finds that the change is necessary to accomplish the purposes of the improvement. ~~An order issued by the board under this section granting the prayer of the petition is effective on the day of the hearing at which the board issued it.~~

~~Upon granting the petition, the board shall order the county auditor to transfer from the general revenue funds of the county, not otherwise appropriated, to the general drainage improvement fund an amount not more than twenty-five per cent of the engineer's preliminary estimate. After the twenty-one day period for appeal, as provided in section 6131.25 of the Revised Code, has expired and no appeal has been taken, and as soon as the transfer of funds has been authorized, the board shall order~~

- (2) Order the county engineer to prepare the reports, plans, and schedules as provided in sections 6131.01 to 6131.64 of the Revised Code this chapter. It shall fix

- (3) Set a date for the filing of the reports, plans, and schedules by the engineer, allowing such time as is necessary for the preparation of the reports, plans, and schedules by the engineer, and such

time may be extended from time to time by the board.

~~The board shall adjourn the hearing on the improvement to the date that it has fixed for the filing of the reports, plans, and schedules by the engineer and adjourn the proceedings from time to time, if necessary, thereafter. No change in the route or termini of any proposed improvement shall be made, no branches, laterals, or spurs shall be granted, and no change shall be made in the nature of the work proposed after the first hearing is completed, except upon application of an interested owner affected by the proposed improvement and upon notice given to all owners affected by the change, as provided in sections 6131.01 to 6131.64 of the Revised Code. All the findings and orders of the board shall be entered in its journal.~~

~~The route of an improvement shall so far as practicable be located so as to avoid running the improvement diagonally across property and shall where practicable follow property lines, section lines, and lines of public highways, but where the line of a public highway is followed, approval must be obtained from the agency owning the highway.~~

~~(D) After the thirty-day period for appeal provided under section 6131.25 of the Revised Code has expired and no appeal has been filed, the board may order the county auditor to transfer funds of the county not otherwise appropriated to the appropriate drainage improvement fund. The board shall not appropriate an amount that exceeds twenty-five per cent of the engineer's preliminary cost estimate.~~

~~(E) If the board finds for the decides to proceed with a petition for a proposed improvement, and if the improvement is being undertaken through the joint efforts and cooperation of the board and any federal or state agency, and if the federal regulations, state agency rules, or other procedures of the cooperating agency are in conflict with Chapter 6131. of the Revised Code with respect to the procedures for the preparing of contracts, the issuing of bids, the making of awards, and generally the administering of the contracts, the board may adopt the federal regulations, state agency rules, or procedures in those areas where conflict exists and proceed with the improvement in accordance with the requirements of the federal regulations, state agency rules, or procedures.~~

~~(F) The board shall enter all of its findings and orders in the board's journal. An order issued by the board under this section granting the intent of the petition is effective on the day of the hearing at which the board issued it.~~

~~Sec. 6131.13. The board of county commissioners may hear and determine at the same time and under one petition, upon proper averments, the following questions:~~

~~(A) The locating of a new ditch, drain, or watercourse, or one partly old and partly new, or one partly open and partly tiled;~~

~~(B) The deepening, widening, straightening, boxing, tiling, or changing of the route or course of, or the altering in any manner of, an old ditch, drain, or watercourse;~~

~~(C) The connecting into a single system of two or more improvements.~~

~~The board, on application of owners interested or at its own discretion, may consolidate and treat as a petition for one improvement petitions pending at the same time for two or more separate improvements which connect with each other, or which serve common territory, or which can readily be combined into one system. In case of such consolidation, the board shall enter its action upon its journal, and if necessary, it shall order the county engineer to re-estimate and make such further reports and schedules as are necessary upon its order consolidating the improvements. If two or more~~

improvements are consolidated, the proceedings after consolidation shall be the same as if all the matters were petitioned for in one petition.

Sec. 6131.14. ~~The (A) Upon the board's determination to proceed with the project survey and design on a proposed improvement under section 6131.12 of the Revised Code, the clerk of the board of county commissioners shall certify immediately forward a copy of the board's findings and orders to the county engineer immediately, after the requirements of section 6131.12 of the Revised Code have been met, a copy of the findings and orders of the board of county commissioners in favor of an improvement.~~

~~(B) The county engineer shall make the do all of the following:~~

~~(1) Conduct all necessary survey surveys for the proposed improvement. The engineer shall make;~~

~~(2) Prepare plans for structures;~~

~~(3) Create maps showing the location of the land proposed to be assessed, and profiles showing the cuttings and gradient;~~

~~(4) Prepare construction drawings of the improvement and shall make;~~

~~(5) Prepare an estimate of the cost of the construction of the improvement, which shall include actual construction cost, the cost of engineering, the cost of the first year maintenance, and the cost of notices, publication, and other incidental expenses. The If applicable, the engineer shall may recommend the maintenance district in which the improvement shall be placed. The assessment of the improvement for maintenance for one year shall be added to the cost of construction in making the actual assessment and shall be credited to the maintenance fund of the district.~~

~~(6) Prepare a schedule of damages that includes both of the following:~~

~~(a) An estimate of the value of land or other property necessary to be acquired through purchase or voluntary transfer or appropriated in accordance with section 163.01 to 163.62 of the Revised Code, and a description of that land or other property;~~

~~(b) An estimate of the total damages to be sustained by owners as a result of the construction and subsequent maintenance of a proposed improvement, along with the name and address of each owner that is alleged to be damaged, the amount of each owner's estimated damages, and an explanation of each owner's injury.~~

~~(C) The county engineer shall set proper construction stakes and shall note the intersection of the line of the improvement with the apparent land boundaries of separate owners, township and county lines, natural landmarks, road crossings, or other lines or marks. The engineer shall take and note any necessary levels off the line of the improvement to determine the area of the land subject to drainage.~~

~~The engineer shall also establish, at intervals of not less than one in each mile, in the most practicable permanent form, and in locations where destruction or disturbance is improbable, bench marks from which the original levels of the improvement can be established. The bench marks and all levels of the improvement shall be based upon some established elevation of the geological survey of the United States, if any, in the county, and the relation of any assumed elevation used by the engineer in the work upon any improvement to the elevation established by the geological survey shall be accurately stated in the engineer's report. The engineer shall make a plan of the work proposed to be done, which shall show the grade, the depth, the excavating to be done, the location of~~

the permanent bench marks and their actual elevation based on the most recent United States geological survey data above or below the base elevation used, and such other data as in the judgment of the engineer will aid in retracing lines, levels, or other features of the improvement. The plan shall indicate the profile and the nature of the excavation.

~~As soon as the engineer has completed the maps, profiles, and plans for the improvement, the~~ (D)(1) The engineer shall transmit copies thereof of the construction drawings to the director of natural resources, the director of transportation when a state highway is affected, and the board of directors of any conservancy district within which any part of the lands or streams affected by the proposed improvement may lie.

(2) The director of natural resources, the director of transportation, and the board of directors of the conservancy district shall review the plans submitted and within thirty days file with the county engineer a report indicating approval or, in case that approval cannot be given, a report with recommendations.

(3) The approval or report with recommendations, which, where appropriate, shall include recommendations regarding the use of best management practices that are consistent with the prayer of the petition, shall be transmitted by the engineer to the board of county commissioners, who shall take notice of the approval or recommendations and shall authorize the engineer to make any changes or alterations that in the judgment of the board are necessary or desirable.

(4) Upon receipt of approval of the plans by the director of natural resources, the director of transportation, and the board of directors of any conservancy districts affected, or upon completion of any changes authorized by the board of county commissioners, the engineer shall file the construction drawings with the clerk of the board of county commissioners ~~all maps, profiles, and plans as provided by this section.~~

(E) The engineer shall prepare specifications for the construction of the improvement. ~~The engineer shall specify a width of temporary easement for construction purposes. The specifications shall provide for that include all of the following:~~

(1) The route of an improvement, which, as practicable as possible, shall be located to avoid running the improvement diagonally across property and to follow property lines, section lines, and lines of public highways. However, where the line of a public street or highway is followed, approval must be obtained from the governmental entity owning the street or highway.

(2) The width of the temporary easement for construction required for the improvement. The specifications shall require the temporary easement to include spreading and leveling of spoil banks and shall prohibit the temporary easement from being more than seventy-five feet from the top of the bank.

(3) The width of the permanent easement required for the improvement. The specifications shall provide for erosion and sediment control through the establishment of a sod or seeded strip not fewer than ~~four~~ ten feet nor more than fifteen feet wide, measured at right angles to the top of the ditch bank, on both sides of the ditch, except where suitable vegetative cover exists. The strip or other such controls shall be considered a part of the permanent improvement. ~~Sod~~

(F) The county engineer shall provide to the county auditor the acreages of sod or seeded strips established ~~and maintained in excess of four feet under this section and the county auditor shall be compensated for by their removal~~ remove the entire amount of each sod or seeded strip from the

taxable valuation of the property of which they are a part. ~~The engineer shall make estimates of the cost of excavating and of the cost of material and may divide the construction of the improvement into construction areas as considered expedient.~~

(G) The engineer shall make a note of all fences, floodgates, culverts, or bridges that will be removed in constructing the improvement and of all culverts or bridges that must be adjusted or the channel of which must be enlarged to construct the improvement.

(H) In estimating the cost of an improvement, the engineer may include the cost of installing gates in fences on the reserved right-of-way where needed to provide access for maintenance. The gates shall be kept locked when requested by the owner and shall be considered a part of the original improvement and subject to maintenance as provided by ~~sections 6137.01 to 6137.12 Chapter 6137.~~ of the Revised Code.

(I) The engineer shall make an estimate of the cost of inspecting the work as it progresses and shall, with the assistance of the prosecuting attorney, prepare forms for contracts with bidders and forms of bid guaranties that meet the requirements of section 153.54 of the Revised Code.

(J) Upon the acceptance of the contract work, the engineer shall file with the county recorder ~~a~~ all of the following:

(1) A property plat showing the ~~general~~ owners of record and parcel numbers along the drainage improvement;

(2) The location of the improvement ~~and a~~;

(3) A statement describing the width of the permanent easement for maintenance as provided for in section 6137.12 of the Revised Code;

(4) An affidavit listing the owners of record, complete property descriptions, and parcel numbers subject to the permanent easement. The engineer shall note the property plat in the affidavit.

The engineer shall include the permanent easement in the county's geographic information systems or other mapping system, if available. The

The engineer shall make an itemized bill of the costs and expenses incurred in the proper discharge of duties set forth in this section and shall file the maps, profiles, plans, schedules, and reports with the clerk of the board of county commissioners upon completing them.

Sec. 6131.15. (A) The county engineer shall ~~estimate the~~ prepare a schedule of assessments that includes all of the following:

(1) The name and address of each private owner of land and a description of the land to be benefited by the proposed improvement. The engineer shall obtain the names and addresses from the tax duplicates of the county. The engineer shall obtain the description from the county recorder's office. For purposes of the description the county recorder shall not require a metes and bounds survey.

(2) The amount of the estimated assessment to be assessed to each tract of land. An assessment shall not be less than ten dollars. The total amount of the estimated assessments, including the total estimated assessments allocated to public corporations and the state, shall equal the estimated cost of the proposed improvement.

(3) An explanation of each assessment that is for purposes other than drainage;

(4) The benefits accruing to ~~public corporations~~ political subdivisions and any department, office, or institution of the state. The engineer shall determine the estimated cost of the improvement



that each ~~public corporation~~ political subdivision and any department, office, or institution of the state shall be assessed by reason of the benefit to public health, safety, convenience, the environment, wildlife, recreation, and welfare, or as the means of improving any street, road, or highway under the control or ownership of any ~~public corporation~~ political subdivision or any department, office, or institution of the state, or for benefit to any land owned by any public corporation or any department, office, or institution of the state. The engineer shall prepare a schedule of assessments containing the name and address of each ~~public corporation~~ political subdivision and each department, office, or institution of the state so benefited, the amount of the estimated assessment, and an explanation of the assessment if the assessment is for purposes other than drainage.

~~The county engineer shall also include in the schedule of assessments the name and address of each private owner of land and a description of the land believed to be benefited by the proposed improvement, which names and descriptions shall be taken from the tax duplicates of the county. The engineer shall enter in the schedule the amount of the estimated assessment, which in no case shall be less than ten dollars, to be assessed to each tract of land and an explanation of the assessment, if the assessment is for purposes other than drainage, by reason of the construction of the improvement upon which the assessment is based. The total of these estimated assessments including the total estimated assessments allocated to public corporations and the state shall equal the estimated cost of the proposed improvement.~~

~~In determining the estimated drainage assessments for a parcel, the county engineer shall give primary consideration to the potential increase in productivity that the parcel may experience as a result of the improvement and shall also give consideration to the quantity of drainage contributed, the relative location of the property to the project, the portion of the project through which the drainage from the parcel flows, the value of the project to the watershed, and benefits as defined in section 6131.01 of the Revised Code.~~

~~The county engineer shall also estimate the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement and the subsequent maintenance of the improvement. The engineer shall prepare a schedule of damages containing the name and address of each owner alleged to be damaged, the amount of the estimated damages, and an explanation of the injury upon which the estimate is based. The engineer's schedule of damages shall also contain the value of the land or other property necessary to be taken, the name and address of the owner, and a complete description of the land or other property. The engineer shall include the total of the estimated damages and valuations as part of his estimate of the total cost of constructing the improvement.~~

(B) In calculating each estimated assessment, the county engineer shall do both of the following:

(1) Use the information compiled in accordance with divisions (B)(5) and (6) of section 6131.14 of the Revised Code;

(2) Consider the following factors:

(a) Acreage of a parcel;

(b) Volume of water produced by a parcel;

(c) Remoteness of the parcel to the improvement;

(d) Percentage of the improvement used by the parcel;

(e) Work determined to benefit that particular parcel only and not the remainder of parcels in the watershed;

(f) Soils;

(g) County auditor's land value or current agricultural use value, if applicable;

(h) Existing drainage infrastructure that can be incorporated into the improvement and associated cost savings;

(i) Any other factors pertinent to that particular petition and watershed;

(j) Any benefits as defined in section 6131.01 of the Revised Code.

(C) The county engineer, in making his the estimate of the amount to be assessed each tract of land, each ~~public corporation~~ political subdivision, and the state in accordance with this section, and the board of county commissioners, in amending, correcting, confirming, and approving the assessments in accordance with section 6131.22 of the Revised Code, shall levy the assessments according to benefits. Each tract of land and ~~public corporation~~ political subdivision affected by an improvement and the state shall be assessed in the proportion that each is benefited by the improvement, as "benefit" and "improvement" are defined in section 6131.01 of the Revised Code, and not otherwise.

Sec. 6131.16. (A) Upon the filing with the clerk of the board of county commissioners of the reports, plans, and schedules by the county engineer as provided in section 6131.14 of the Revised Code, the board of county commissioners shall fix a date not fewer than twenty-five nor more than ninety days thereafter when a final hearing on the report shall be held. Upon the fixing of the date

(B) At least twenty-one days prior to the date established for the hearing, the clerk shall immediately give provide notice by certified mail, return receipt requested, or by first-class mail in a five-day return envelope. For each improvement, all individual notices shall be sent by the same type of mail. Whichever method the board chooses, the to all owners that are adjacent to the proposed improvement by certified mail and to all others in the area to be benefited by the proposed improvement by certified or first class mail. The clerk shall ensure that the words "Legal Notice of Proposed Drainage Improvement" shall be are printed in plain view on the face of the envelope. Notice-The clerk shall be sent send the notice to all the owners whose names appear in the engineer's schedules of assessments and damages. The notice-clerk shall be mailed-mail the notice to each address as given in the petition or to such address as the clerk learns to be the correct address, as provided in section 6131.07 of the Revised Code. If the schedule of assessments or the schedule of damages filed by the engineer contains the names of owners other than those mentioned in the petition, notices-the clerk shall also be mailed-mail the notice to those owners. The clerk shall include in the notice all of the following:

(1) An owner's estimated assessment, the estimated damages, if any, and of any compensation for land or other property necessary to be taken on each tract of land owned by the owner, as estimated and described in the schedules;

(2) The date, time, and location of the final hearing by the board on the report of the engineer and on the proceedings for the improvement;

(3) A statement that an owner may file an exception to the assessments or a claim for compensation or damages with the clerk of the board of county commissioners not less than five days before the date fixed for the final hearing;

(4) A statement that if bonds or notes are to be issued, an owner may pay an assessment in cash by giving notice to do so on a form proscribed by the board of county commissioners not more than twenty-one days after the final hearing or that an owner may pay the assessments in installments payable with interest added at the same rate that bonds or notes bear interest.

(C) The clerk shall cause to be published a legal notice in at least one newspaper of general circulation in the area affected by the improvement, stating the name and number, if any, of the proposed improvement, the location and nature of the work proposed in the petition, and the date, time, and location of the final hearing. The publication of this notice shall be made in one issue of the newspaper if the individual notices are sent by certified mail. If the individual notices are sent by first-class mail in five-day return envelopes, the publication of this newspaper notice shall be made in two issues of the newspaper, and the notice shall include a list of the names of all addressees whose individual notices were undelivered. The publication shall be not fewer than thirteen days prior to the date of the final hearing. The publication shall serve as public notice to all owners of the substance of the proposed improvement and of the pendency of the final hearing of the board of county commissioners in the proceedings to authorize the construction of the proposed improvement whether or not they were individually named and notified.

~~The mailed legal notice shall notify the owners of the assessment or the estimated damages, if any, and of compensation for any land or other property necessary to be taken on each tract of land owned by the owner, as estimated and described in the schedules, shall notify the owners of the date of the final hearing by the board on the report of the engineer and on the proceedings for the improvement, and shall notify all owners that all claims for compensation or damages must be filed with the clerk of the board of county commissioners before that date fixed for the final hearing. The notice shall further state that if bonds or notes are to be issued, the owner must give written notice within twenty-one days after the final hearing of his intention to pay in cash. The clerk shall include with the legal notice to the owner a form proscribed by the board of county commissioners that the owner shall use to notify the board of his intention to pay in cash. If he does not give notice of his intention to pay in cash within twenty-one days, the installments will be payable with the interest added at the same rate that the bonds or notes bear interest.~~

~~Proof of notice by publication shall be verified by affidavit of the printer or other person knowing that fact, newspaper and the clerk of the board of county commissioners shall prepare a certificate showing the service of the notices by mail, both of which shall be filed with the clerk of the board of county commissioners on or before the day of the final hearing. Notices-If any notices are returned undelivered, the clerk shall keep the returned undelivered notices and their receipts shall be kept on file as a permanent record of the improvement with the permanent file of records required under section 6131.061 of the Revised Code.~~

~~Sec. 6131.17. Any owner may accept the estimated assessment as described in the engineer's schedules, or may accept the estimated damages or compensation as described in the engineer's schedule of damages, or may acquiesce to the engineer's failure to estimate damages or award compensation in his favor, and will be construed to have done so unless he files (A) An owner may file an exception to the county engineer's schedules of assessments or files file a claim for damages or compensation, on or before the date of the final hearing in the proceedings to construct the improvement.~~

~~All exceptions to the engineer's schedules of assessments and damages, and all claims for compensation for land or other property necessary to be taken, and all claims for damages by reason of a proposed improvement not listed in the engineer's schedule of damages, shall be filed with the clerk of the board of county commissioners as provided in section 6131.16 of the Revised Code on or not less than five days before the date of the final hearing in the proceedings to construct the improvement.~~

~~All exceptions to the engineer's schedules and all claims (B) An owner shall include with an exception or claim for compensation or damage shall describe the land, a part of which is the nature of the exception or claim, the amount claimed, if any, and the identity of the property claimed to be taken or damaged, and shall describe the nature of and the reasons for the claim asked to be paid to each claimant.~~

Sec. 6131.19. ~~(A) At the final hearing, or at such time to which said the final hearing is adjourned to hear claims for compensation or damages, the board of county commissioners shall hear any competent evidence offered by any of the interested owners affected owner upon the county engineer's estimate of damages and upon any claim filed for compensation or damages.~~

~~(B) Upon consideration of all the evidence, including the county engineer's schedule of estimated damages, and a view of the premises affected property, if it the board desires such a view, the board shall find and determine the amount of damages to which any owner is entitled for each claim filed by an owner, and shall also determine the fair value of any land or any other property to be taken for said the proposed improvement. The~~

~~(C) If the board of county commissioners awards additional compensation to any owner, the board shall enter its findings in its journal, and shall authorize the county auditor to issue his warrants upon the county treasurer of the county in which the land is located, payable from the general drainage improvement fund, to such claimants for such amounts, which amounts so determined shall be paid before any work on the proposed improvement is done order the county engineer to prepare new assessments for the proposed improvement and the clerk of the board shall notify all owners of the new assessments pursuant to section 6131.16 of the Revised Code.~~

~~(D) An owner may appeal may be taken by any claimant from the an order of the board refusing the allowance of county commissioners concerning a claim for compensation or damages; and an appeal may be taken by any claimant from an order allowing compensation or damages if, in his opinion, the amount awarded is less than the actual damages sustained, or less than the fair value of the land or other property necessary to be taken. Such appeal shall be taken and perfected as provided in sections 6131.01 to 6131.64, inclusive, of the Revised Code this chapter.~~

Sec. 6131.21. ~~(A) At the final hearing on a proposed improvement, after hearing all the evidence offered in the proceedings and after receiving and considering all the schedules, plans, and reports filed by the county engineer, the board of county commissioners shall review and reconsider the its former order made by it finding in favor of the to proceed with project survey and design for the proposed improvement and shall either affirm its former order and proceed to confirm the assessments and order the letting of the contract or shall set aside its former order and dismiss the petition. At the final hearing, if the board finds that the cost of the improvement will be equal to or greater than the benefits that will be derived therefrom if constructed, or if the board finds that the improvement is not necessary, or if it finds that the improvement will not be conducive to the public~~

welfare, ~~the board shall set aside the former order finding in favor of the improvement made by it at the first hearing and shall dismiss the petition.~~

(B) In determining whether or not the improvement should be granted, the board shall consider the following factors:

- ~~(A)~~(1) The cost of location and construction;
- ~~(B)~~(2) The compensation for land or other property necessary to be taken;
- ~~(C)~~(3) The effect on land along or in the vicinity of the route of the improvement;
- ~~(D)~~(4) The effect on land below the lower terminus of the improvement that may be caused by constructing the improvement;
- ~~(E)~~(5) The sufficiency or insufficiency of the outlet;
- ~~(F)~~(6) The benefits to the public welfare;
- ~~(G)~~(7) The benefits to land, public corporations, and the state needing the improvement;
- ~~(H)~~(8) Any other proper matter that will assist ~~it~~ the board in finding for or against the improvement.

(C) The board shall set aside the former order and dismiss the petition if the board finds any of the following:

- (1) That the cost of the improvement will be equal to or greater than the benefits that will be derived from the improvement if constructed;
- (2) That the improvement is not necessary;
- (3) That the improvement will not be conducive to the public welfare.

~~(D) If the petition is dismissed board dismisses the petition for a proposed improvement at the final hearing, all costs for the proceedings, including the costs incurred by the engineer in making surveys, plans, reports, and schedules, may be distributed to the benefiting landowners in the same ratio as determined by the engineer in the final estimated assessments presented at the final hearing. The board shall confirm or alter the assessments as provided for in section 6131.22 of the Revised Code. The approved assessments shall then be certified to the county auditor to be administered pursuant to section 6131.49 of the Revised Code.~~

If the costs are not distributed to the benefiting landowners, ~~they shall~~ the costs must be paid from county funds.

(E) The petitioner, or any owner in favor of the improvement, may appeal from the order of dismissal, as provided in section 6131.25 of the Revised Code.

(F) An order issued by the board under this section is effective on the day of the hearing at which the board issued it.

Sec. 6131.22. (A) At the final hearing on a proposed improvement, if the petition is not dismissed, the board of county commissioners shall hear any evidence offered for or against the assessment proposed to be levied against any owner or on any land as shown by the schedule of assessments filed by the county engineer and shall hear any competent evidence on the question of benefits.

(B)(1) The board, from the evidence offered and from an actual view of the premises, shall amend and correct the assessments, and the assessments so amended or corrected shall be approved by the board. ~~That part of the assessment that is assessed~~

- (2) An assessment for benefits to the general public because the improvement is conducive to

the public welfare shall be paid by the public and shall be assessed against the county payable from the general fund. ~~Such part of the~~

~~(3) An assessment as is found to benefit state roads or highways shall be assessed against the state payable from motor vehicle revenues. Such part of the~~

~~(4) An assessment as is found to benefit county roads or highways shall be assessed against the county payable from motor vehicle revenues. Such part of the~~

~~(5) An assessment as is found to benefit any public corporation or political subdivision of the state shall be assessed against the public corporation or political subdivision and shall be paid out of the general funds or motor vehicle revenues of the public corporation or political subdivision of the state, except as otherwise provided by law. The board shall approve and confirm~~

~~(C) Upon approving the assessments, the board shall order do all of the following:~~

~~(1) Order the engineer to receive bids for the construction of the proposed improvement, and shall fix the date, time, and place for the receiving of bids, which shall be not less than twenty-five thirty days after the date of the order. The board shall determine;~~

~~(2) Determine when the assessments shall must be paid and shall determine;~~

~~(3) Determine whether bonds or notes shall must be issued in anticipation of and payable out of the installments of assessments.~~

~~(D) The board's board shall enter the orders approving the assessments and ordering, the order requiring the engineer to receive bids, and any other orders made at this the final hearing, shall be entered on in its journal. The clerk of the board of county commissioners shall immediately transmit to the county auditor the schedules listing all assessments as approved by the board.~~

~~(E) Any owner opposed to the granting of the petition, or any owner opposed to further proceedings in the improvement, or any owner who claims that the assessment levied against him the owner is excessive or is not in proportion to benefits, may appeal from any order made pursuant to this section, as provided in section 6131.25 of the Revised Code.~~

~~(F) An order issued by the board under this section is effective on the day of the hearing at which the board issued it.~~

Sec. 6131.23. (A) The assessments estimated in accordance with section 6131.14 of the Revised Code shall be payable in not less than two semiannual installments. At the time of the final hearing, in the order approving the levying of the assessments, the board of county commissioners shall determine how long a period of time, in semiannual installments, as taxes are paid, shall be given the owners of land benefited to pay the assessments that are made for an improvement and whether or not bonds or notes shall be issued and sold in anticipation of such payments. If bonds or notes are to be issued, the interest shall be added to the assessments.

(B) If the estimated cost of the improvement does not exceed five hundred dollars, not more than two semiannual installments, as taxes are paid, shall be given to owners of lands benefited to pay the assessments that are made for the improvement. If the estimated cost of the improvement exceeds five hundred dollars, the board may determine the number of installments in which the assessments are to be paid. If any such assessment is twenty-five dollars or less, or whenever the unpaid balance of any such assessment is twenty-five dollars or less, the same shall be paid in full, and not in installments, at the time the first or next installment would otherwise become due.

(C) When assessments are payable in installments and county general funds are used to pay

for the improvement, the assessment shall not exceed thirty semiannual installments, ~~as computed by the county auditor pursuant to section 6131.49 of the Revised Code~~, and shall be payable upon completion of the contract.

(D) When assessments are made payable in installments and bonds or notes have been sold to pay for the improvement, interest shall be added to the installments of assessments at the same rate as is drawn by the bonds or notes issued to pay for the improvements. Any owner may pay the estimated assessments on the owner's land in cash within thirty days after the final hearing without paying any interest thereon. If the legislative authority of a political subdivision chooses to pay the assessments on all parcels within the subdivision, both public and private, in one installment, it shall pass a resolution so stating and shall send the resolution, or a copy thereof, to the board of county commissioners before making the payment. The legislative authority shall pay all subsequent maintenance assessments levied under section 6137.03 of the Revised Code if it chooses to pay the construction assessments on all parcels within the subdivision.

(E) Bonds may be sold for any repayment period that the board of county commissioners may determine proper, not to exceed thirty semiannual installments, ~~except that for bonds sold by a board of county commissioners for soil and water conservation district improvements pursuant to section 940.33 of the Revised Code, the repayment period shall not exceed thirty semiannual installments.~~

Sec. 6131.24. (A) The board of county commissioners shall fix a date, time, and place at the final hearing for the county engineer to receive bids. The county engineer shall prepare the necessary bid documents and legal advertisements as provided in sections 307.87 and 307.88 of the Revised Code.

(B) If an appeal has been taken to the court of common pleas, as provided in section 6131.25 of the Revised Code, the bids may be received and tabulated, but the bid guaranties with the bids shall immediately be returned to the bidders, and no further steps shall be taken on the bids.

Sec. 6131.25. (A) Any affected owner may appeal to the court of common pleas within ~~twenty-one~~ thirty days of the date that any order was issued by the board of county commissioners, ~~as provided in sections 6131.01 to 6131.64 of the Revised Code under this chapter~~, and may appeal any one or more of the following questions:

~~(A)~~ (1) Is the improvement necessary?

~~(B)~~ (2) Will the improvement be conducive to the public welfare?

~~(C)~~ (3) Is the cost of the improvement greater than the benefits conferred?

~~(D)~~ (4) Is the route, termini, or mode of construction the best to accomplish the purpose of the improvement?

~~(E)~~ (5) Are the assessments levied according to benefits?

~~(F)~~ (6) Is the award for compensation or damages just?

(B) The appeal may be taken from any order affecting any part of the improvement as well as from any order affecting the entire improvement.

Sec. 6131.27. If an appeal is ~~perfected by filing the bond and statement provided in~~ filed pursuant to section 6131.26-6131.25 of the Revised Code, the clerk of the board of county commissioners shall promptly prepare a transcript of the orders made by the board of county commissioners, and shall file such transcript with the clerk of the court of common pleas, together with ~~all the original papers in said proceedings. The clerk of the court of common pleas shall file~~

~~such transcript and papers in the court of common pleas the permanent files of records of the proceedings maintained by the board of county commissioners and county engineer as required under section 6131.061 of the Revised Code. The proceedings on appeal in the court of common pleas shall be styled, "In the matter of the appeal in county ditch or improvement No \_\_\_\_\_, petitioned for by \_\_\_\_\_"~~

Sec. 6131.28. Several owners may appeal from the orders in the same improvement ~~and file separate bonds and separate statements stating the matters appealed.~~ If several owners appeal, only one transcript need be made by the clerk of the board of county commissioners. All the appeals shall be filed in one action in the court of common pleas, which court, on any appeal, may separate for hearing or trial the issues appealed to said court, and render its order, judgment, or decree upon the issues as the same are determined. The case on appeal shall be advanced, or tried as soon as the court can hear it.

Sec. 6131.30. (A) ~~The court of common pleas, on appeal, shall hear the matters appealed de novo. The proceedings shall be conducted under the rules of law and procedure for civil cases. An appeal shall bring into the court all the owners who in any way may be interested in or affected by the matter appealed. The court, exercising equitable jurisdiction, shall hear all matters appealed, except an appeal from an order allowing or refusing to allow compensation or damages. The court may view the premises the same as views in other civil cases and shall make such judgment, order, or decree as is warranted by the evidence. Any owner aggrieved by the judgment, order, or decree may appeal for a review of the proceedings, the same as in other civil cases. On appeal, the burden of proof shall be on the owner having the affirmative of the proposition, who shall have the opening and closing.~~ The court, exercising equitable jurisdiction, shall bring the entire proceedings before it in order to determine all the issues raised in the proceedings and enter a final judgment, order, or decree for or against the improvement petitioned for and for or against the assessments to be levied and the compensation and damages to be paid.

(B) ~~If the court orders the county engineer to make a survey and file his~~ the engineer's reports, plans, and schedules, the court also shall enter an order for transfer from the general revenue funds of the county to the general drainage improvement fund a sum of not more than twenty-five per cent of the engineer's preliminary estimate.

~~The court of common pleas may appoint a board of arbitrators to assume the duties of the judge. The board shall be comprised of three disinterested persons chosen by the judge, who shall designate one of the persons to be chairman. A decision of the board shall require approval of a majority of the members. Either party may appeal the board's decision to the court of common pleas, which shall decide the case on the record of arbitration.~~

Sec. 6131.32. On appeal from an order made by the board of county commissioners allowing or refusing to allow compensation or damages, the owners interested shall have the right of trial by jury. ~~The issues shall be made by the application or claim filed with the clerk of the board of county commissioners for compensation or damages, and the statements in such applications shall be deemed denied. The claimant for compensation or damages shall have the affirmative and shall have the opening and closing of the trial. The case shall proceed pursuant to the law and the rules governing civil procedure, with the same rights for motions for new trial and the right of appeal as in other civil cases.~~ The jury may view the premises, as in other civil cases. ~~Just compensation or~~



~~damages shall be awarded, as provided in the Ohio constitution.~~

~~Sec. 6131.33. The jury authorized by section 6131.32 of the Revised Code, upon submission of the case to it under proper charge of the court of common pleas, and upon a form of verdict provided by the court, shall return its verdict determining the matter in issue, upon which verdict a judgment shall be entered by the court as in other civil cases. The verdict shall be signed by the jury. Nine or more of the jurors must concur in a verdict. If there is more than one appellant in a trial by jury authorized under section 6131.32 of the Revised Code with separate claims on the question of allowance or compensation or damages, or the refusal to allow compensation or damages, or if there are issues as to different properties, the court may submit all the several claims and issues to the same jury, with appropriate verdicts as to each claim, ~~or it.~~ The court also may direct separate trials for the separate claims and issues, ~~or any one or more of them. In said proceedings the~~ The court shall instruct the jury shall be instructed that in its verdict for compensation for land taken or for damages to any land by an improvement it shall not consider or deduct the value of any benefits that such land will receive from the construction of such improvement.~~

~~Sec. 6131.34. The court of common pleas shall receive the verdict referred to in section 6131.33 of the Revised Code, and if no motion for new trial thereof is filed within three days, which motion may be filed as in other civil cases and for like causes, or if such motion for a new trial is overruled, it shall render judgment according to said verdict, and for or against the owners, separately, if there is more than one. The court shall tax the costs of appeal, including jury fees, in favor of the prevailing party, and where two or more appeals are tried together the court shall divide the costs as is equitable. If the appellants, on claims for compensation or damages, do not recover a judgment for more than the amount of compensation or damages awarded by the board of county commissioners, the costs on the hearing as to compensation or damages on appeal shall be taxed against the appellants. If the amount recovered is greater than the amount awarded by the board, the costs shall be taxed against the county.~~

The prosecuting attorney shall represent the county in all appeals on questions of compensation or damages. On appeals of other matters which are tried to the court sitting as a court of equity, the court shall adjudge the costs as it deems just and equitable except as otherwise provided in section 6131.01 to 6131.64, inclusive, of the Revised Code.

Sec. 6131.36. (A) After the final judgment, order, or decree upon any appeal is rendered by the court of common pleas, the clerk of the court of common pleas shall, within twenty-one days, make a transcript of the same and shall certify and transmit it with all original papers in the case to the clerk of the board of county commissioners, who shall forthwith enter the judgment, order, or decree upon the journal of the board. If the judgment, order, or decree is in favor of the granting of the improvement, the board shall proceed with the improvement proceedings in compliance with the final judgment, order, or decree from the point at which they were terminated by the appeal or from the point at which the court orders the board to proceed.

(B) Upon the expiration of the twenty-one day appeal period provided in section 6131.25 of the Revised Code, the clerk of the board of county commissioners shall transmit the schedules of assessments and damages to the county auditor. The board of county commissioners and the county engineer shall proceed with letting contracts and constructing the improvement, and the county auditor shall proceed to levy and collect assessments and to pay compensation and damages as if no

appeal had been taken. If an appeal is ~~perfected to the court of appeals and a supersedeas bond is given~~ filed pursuant to section 6131.25 of the Revised Code, the board and the engineer shall stay their proceedings until the final determination of the proceedings in the court of appeals or in the supreme court.

~~Sec. 6131.42. Any owner who has suffered any loss or damage by reason of the failure of the contractor to perform his contract, or by his negligence in performing the contract, may bring suit against the contractor and his bondsmen to recover the damages so sustained. Two or more owners who are assessed for the construction of the improvement may in one suit bring an action against the contractor and his bondsmen to recover the damages which may be sustained by all the plaintiffs by reason of the failure of the contractor to construct the improvement according to the contract.~~

~~When two or more owners join in one suit in an action for damage against the contractor, the jury in one verdict shall find the damages suffered by all the plaintiffs. The court shall enter judgment on the verdict in favor of the plaintiffs for the amount of damages, as found by the jury, and shall at the time of entering the judgment find what part of said judgment should be paid to each of the plaintiffs respectively, and shall order the clerk to the court to pay to each of said plaintiffs the part of said judgment as found by the court when said judgment is paid. Any owner who is assessed for the construction of any improvement may bring an action to enjoin the payment of any money owed a contractor who has not constructed the work according to the contract and specifications until the contractor has constructed the improvement according to the contract and specifications. The remedies provided in this section are in addition to all other remedies provided by law.~~

Sec. 6131.43. (A) Upon the completion of the work and the approval of it by the county engineer, the board of county commissioners shall order the county auditor to reduce pro rata the assessments confirmed by it by the difference between the estimated cost of the construction and the final cost as certified by the county engineer. The assessments so reduced, including the cost of location, engineering, compensation, damages, and contingency and the assessment for maintenance for one year, shall be levied upon each parcel of land, each public corporation, and each department, office, or institution of the state as stated in the schedules as of the date of the order of the board approving the contracts and ordering the levying of the assessments.

(B) The auditor shall notify the owners of all assessed lands of the amount of the actual assessment, which shall be not less than ten dollars, and of the payment plan for the collection of the assessments. The auditor shall immediately place the assessments so levied upon the duplicates of the county, and the assessments shall be a lien upon the several parcels of land respectively from and after the date of the order of the board approving and levying the assessments. The auditor shall be liable on ~~his~~ the auditor's bond for any damages sustained by any person by reason of the auditor's failure to place promptly the assessments upon the proper duplicates of the county.

(C) The county auditor shall transmit to the governing body of any ~~public corporation~~ political subdivision affected by an improvement the assessments levied against it. The governing body shall authorize payment to be made to the county treasurer of the county in which the improvement is located from the general fund of the ~~public corporation~~ political subdivision, except as otherwise provided by law.

(D) The county auditor shall also transmit to the director of any department, office, or institution of the state, affected by an improvement the assessments levied against any department,

office, or institution of the state. Payment shall be made to the county treasurer of the county in which the improvement is located from the drainage assessment fund in the manner provided by section 6133.15 of the Revised Code. In presenting their proposed expenses to the director of budget and management pursuant to section 126.02 of the Revised Code, the directors of all departments, offices, or institutions of the state shall list all unpaid assessments received before the first day of October of the year preceding the first regular session of the general assembly for the state's proportionate share of the cost of any improvement authorized or constructed under ~~sections 6131.01 to 6131.64, 6133.10 to 6133.15, and 6135.01 to 6135.27~~ this chapter and Chapters 6133. and 6135. of the Revised Code and all unpaid assessments for maintenance as provided by ~~sections 6137.01 to 6137.14~~ Chapter 6137. of the Revised Code. The assessments so listed shall be included in the state budget estimates of revenues and expenditures for each state fund and budget estimates for each state agency prepared and submitted to the governor under section 126.02 of the Revised Code.

~~Sec. 6131.47. During the execution of the work on an improvement, the county engineer shall cause notice to be given to the owner within seven days in advance of removal or alteration of a culvert, bridge, fence, or floodgate, where the removal or alteration is necessary to the progress of the work of the improvement, to remove or make such alteration as the engineer finds necessary.~~

~~During the formulation of the plans, the~~ (A) The county engineer shall evaluate all culverts and bridges, except those on state and federal highways, for adequacy of capacity, vertical and horizontal alignment, and stability. Any ~~The county engineer shall schedule any bridge or culvert found not conforming that does not conform~~ with the design of the drainage improvement shall be scheduled for removal and replacement or repair as the engineer considers necessary.

~~(B) If, in the judgment of the county engineer, determines that~~ the culverts and bridges were adequate in capacity or vertical and horizontal alignment at the time of their installation, the removal and replacement ~~with a comparable, adequate culvert or bridge~~ shall be made at the expense of the project less any costs, which shall be apportioned by the engineer, for correction, maintenance, or replacement of the culvert or bridge in whole or in part due to deterioration or instability had the structure been left in place. The latter costs shall be specially assessed to the owner.

~~Any~~ (C) The county engineer shall schedule in the project plans any culvert or bridge, except those on state and federal highways, that is washed out in whole or part, but that otherwise meeting meets the requirements of the drainage improvement, shall be scheduled in the project plans for such repairs, additions, or other corrective measures as in the opinion of the engineer are necessary to the preservation of preserve the bridge or culvert, ~~the~~. The costs of which shall be assessed to the appropriate owner for reasons that the culvert or bridge was improperly designed and constructed.

(D) Fences and floodgates impeding the flow of water shall be removed as a part of the drainage improvement. Replacement may be made by the owner, provided that prior written approval is obtained from the county engineer.

(E) The county engineer shall cause notice to be given to the owner not later than seven days in advance of removal or alteration of a culvert, bridge, fence, or floodgate.

(F) Any owner may furnish the work and material in lieu of a special assessment, provided he makes the owner does all of the following:

(1) Makes written application to the county engineer within ten calendar days after the final hearing, furnishes;

~~(2) Furnishes~~ the work and materials in accordance with the specifications for the improvement, ~~performs same;~~

~~(3) Performs the work~~ so as not to delay the project contractor, ~~and completes;~~

~~(4) Completes~~ the work prior to the completion of the work on the whole improvement.

~~Should (G) If the owner default defaults~~ on any or all of these conditions, the county engineer shall recommend to the board of county commissioners that the default be completed by an extra work order to the project contractor and its cost assessed to the owner.

Sec. 6131.50. ~~(A)~~ The board of county commissioners of each county ~~shall may~~ provide and establish the "general drainage improvement fund," ~~which fund shall to~~ be used as a sinking fund for all bonds issued under sections 6131.01 to 6131.64, inclusive, of the Revised Code. ~~Said~~

~~(B)~~ The fund ~~shall may~~ consist of any of the following:

~~(A)-(1)~~ Any taxes levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of;

~~(B)-(2)~~ The proceeds of all bonds issued and sold under sections 6131.01 to 6131.64, inclusive, of the Revised Code;

~~(C)-(3)~~ The collections from all special assessments for benefits to property, as provided in such sections;

~~(D)-(4)~~ Such other funds as by law are provided to be paid therein.

Sec. 6131.51. ~~(A)~~ All costs and expenses of improvements under ~~sections 6131.01 to 6131.64 of the Revised Code this chapter~~, including contract prices of construction and the costs of locating the improvement, ~~shall may~~ be paid from the general drainage improvement fund. ~~No warrants shall be drawn to be paid from the fund unless it contains a sufficient amount not otherwise specifically appropriated to pay them.~~

~~(B)~~ The letting and approving of any contract for an improvement shall be considered a specific appropriation of the amount of the obligation, and that amount shall be set apart for the purpose of the payment and contingently charged against the fund. If at any time the fund contains the proceeds of bonds or notes issued and sold under such sections, the fund shall not be depleted below the obligations incurred by the bond or note issue unless assessments or levies have been made or ordered made in sufficient amount to redeem the bonds or notes as they fall due. If at any time obligations legally incurred exceed the amount of the drainage improvement fund, an amount of the general revenue funds in the county treasury equal to the deficiency, unless otherwise appropriated, may by resolution of the board of county commissioners be transferred to the general drainage improvement fund.

~~(C)~~ At any time after assessments collected for a drainage improvement exceed the amount allocated to the board for engineering expenses, the board of county commissioners may by resolution transfer from the drainage improvement fund to the general revenue fund of the county an amount equal to that amount as reimbursement of the sum previously transferred under section 6131.12 or 6131.30 of the Revised Code.

Sec. 6131.52. ~~The (A) If necessary, the~~ board of county commissioners, ~~at its each~~ March session, ~~annually~~, shall, ~~if necessary~~, levy upon the grand duplicate of the county a tax, not to exceed five-tenths of one mill on the dollar, that is sufficient to pay for the location and construction of the portions of the respective improvements located by it the board or for which the county has been

assessed under ~~sections 6131.01 to 6131.64, 6133.01 to 6133.15, 6135.01 to 6135.27, or 6137.01 to 6137.14~~ this chapter or Chapter 6133., 6135., or 6137. of the Revised Code, ~~which tax, when~~. When collected, the tax shall be credited to the general drainage improvement fund.

(B) For the purposes of ~~sections 6131.01 to 6131.64, 6133.01 to 6133.13, 6135.01 to 6135.25, and 6137.01 to 6137.14~~ this chapter and Chapters 6133., 6135., and 6137. of the Revised Code, the board of county commissioners may levy a tax under division (X) of section 5705.19 of the Revised Code upon all of the property listed and assessed for taxation in the county. In addition to the actions required under section 5705.19 of the Revised Code, the board shall cause to be filed with the county auditor and the board of elections of the county, at least sixty days prior to the passage of the resolution required under that section, an accurate map showing the locations and types of any proposed improvements, the areas to be benefited, and the existing system of drainage improvements that is to be maintained from the proceeds of the levy.

Any funds collected as a result of such a levy ~~shall~~ may be credited to the general drainage improvement fund of the county in which the tax is levied.

(C) For the purposes of ~~sections 6131.01 to 6131.64, 6133.01 to 6133.13, 6135.01 to 6135.25, and 6137.01 to 6137.14~~ this chapter and Chapters 6133., 6135., and 6137. of the Revised Code, the board of county commissioners may adopt a resolution designating any portion of the county as a drainage improvement district. If a copy of the resolution and a map or legal description of the district's boundaries have been filed with the county auditor in such form as the county auditor prescribes, the board may levy a tax within the district under division (X) of section 5705.19 of the Revised Code. The board shall base its designation on the location of a system of drainage improvements and on the areas to be benefited by that system. The proceeds of the levy shall only be used for the construction and maintenance of the system of drainage improvements within the drainage improvement district.

For the purposes of this section, the board of county commissioners is constituted the "taxing authority" and the county auditor is the "fiscal officer," within the purview of Chapter 5705. of the Revised Code.

Sec. 6131.55. (A) Any owner of land affected by an improvement who has not received notice thereof and has not had an opportunity to be heard as provided in ~~sections 6131.01 to 6131.64, 6133.01 to 6133.11, or 6135.01 to 6135.27~~ this chapter or Chapter 6133., 6135., or 6137. of the Revised Code may bring an action in the court of common pleas of the county wherein ~~his~~ the owner's land is located, against the board of county commissioners in its official capacity, to recover any tax or assessment ~~therefor, if paid, to enjoin any tax, assessment, or levy therefor upon~~ his the owner's lands, to recover for any damages sustained, or for compensation for any property taken. ~~The owner's rights and remedies in the action shall be the same as for any like demand. In the action the~~

(B) The board may plead and prove the value of any actual benefit to the land by reason of the improvement ~~in litigation.~~

(C) The rights granted by this section shall be in addition to all other rights provided by law.

Sec. 6131.60. If one or more members of a board of county commissioners are petitioners for an improvement or own land that will be taken, benefited, or damaged by the improvement petitioned for, the clerk of the board of county commissioners shall notify the judge of the court of common pleas of the county who shall within ten days appoint as many disinterested ~~freeholders~~ owners of the

county as are necessary to take the place of the interested members. ~~The appointees shall not be related by blood or affinity to the interested members. They shall before acting be sworn to perform faithfully and impartially the duties of the members in the matter of the improvement, which oath shall be signed by them and by the officer before whom the same is taken and filed with the clerk. Upon appointment and qualification the appointee~~ The appointees shall, in the proceedings upon the improvement, perform all the duties of the disqualified members and ~~shall~~ may receive from the general drainage improvement fund the same per diem rate as the disqualified ~~member receives, as shown by the record for such services, and the amount so paid shall be costs taxed in the proceedings~~ members receive.

Sec. 6131.63. ~~Except when an owner whose land is used for agricultural purposes desires to install tile by extending or adding to his own laterals or desires to expel water therefrom into an open ditch on his own land in the same watershed, when~~ (A) When one or more owners desire to join in the construction of an improvement that will benefit the land of the owners, and when the owners are willing to construct ~~the and pay the costs of a drainage improvement and pay the cost thereof that will benefit the land of the owners,~~ they may enter into a written agreement for the construction of the improvement, or they may enter into an agreement to construct such ~~which may include each owner constructing part of the improvement as a person mutually agreed upon apportions to each of them respectively. In the agreement the owners shall provide that~~

(B) The owners shall file the agreement and the plan and schedules for construction of the proposed improvement shall be filed with the clerk of the board of county commissioners of the county in which the improvement is to be constructed. When the agreement and schedules are so signed, the plan is approved by a professional engineer registered in this state, and the agreement, schedules, and plan are filed with the clerk of the board of county commissioners, the ~~The clerk shall immediately refer~~ submit the agreement, plan, and schedules to the county engineer for examination and review.

(C) The county engineer shall determine the adequacy of the plan and schedules and the effect of the proposed improvement on any other improvements and on any highways in the area affected.

(D) The county engineer shall also prepare a schedule of proposed assessments for the maintenance of the improvement according to an estimate of benefits accruing to each owner and an estimate of maintenance costs including the engineer's costs in preparing the schedules. The board shall pay the engineer's costs out of the county general fund.

(E) The engineer shall file with the clerk of the board of county commissioners, within sixty days, a report of ~~his the engineer's~~ review together with such recommendations for change, amendment, or alteration of the agreement, plan, and schedules as he may determine to be necessary in the public interest.

(F) When the agreement, plan, and schedules, as presented or as amended by the owners pursuant to the county engineer's recommendations, are approved by the county engineer, the engineer shall file, within sixty days, a certificate of approval with the clerk of the board of county commissioners. Failure to file a certificate of approval within sixty days constitutes a presumption of certification and the owners may proceed to construct.

~~Upon the filing with the clerk of the board of county commissioners of the schedule of~~

~~maintenance assessments prepared by the county engineer as provided by this section, together with his certificate of approval, the~~

(G) The board shall ~~proceed to~~ set a hearing date on the engineer's proposed maintenance assessments for the drainage improvement not less than twenty-five nor more than ninety days ~~thereafter after the engineer files a certificate of approval~~ and shall notify all persons whose names appear in the engineer's schedule of maintenance assessments in accordance with section 6131.16 of the Revised Code. At the hearing on the proposed assessments the board of county commissioners shall hear any evidence offered for or against the assessments proposed to be levied against any owner as shown by the schedule of assessments filed by the county engineer and shall hear any competent evidence on the question of benefits.

(H) The board, from the evidence offered, may amend and correct the assessments, and the assessments so amended or corrected shall be approved by the board and the approval entered on its journal. Once the assessments have been approved, all further proceedings in connection with the maintenance of the improvement shall be in accordance with Chapter 6137. of the Revised Code.

(I) The clerk shall record the agreement, plan, and schedules in the drainage records of the county, and the agreement shall locate and establish the improvement as a ~~public watercourse~~ drainage improvement. The improvement shall then be constructed by the owner in accordance with the approved plans.

(J) This section shall not be interpreted to include improvements or changes in stream channels that may be made by the department of transportation or other public agencies or railroads at their own expense for the purpose of providing a more adequate waterway along a highway or at the site of a bridge or culvert or to improve conditions of flow through them or for the purpose of protecting the highway or road bed and that do not limit future deepening of the channel.

Sec. 6131.631. (A) When construction of a new single span bridge or culvert or extension of an existing culvert that will limit the future deepening of a public watercourse is contemplated in connection with the construction of a state highway or other public improvement, the director of transportation or other public agency proposing the construction shall file plans for the construction with the clerk of the board of county commissioners of the county in which the construction or improvement is to be constructed, ~~who~~.

(B) The clerk shall immediately refer the plans to the county engineer ~~for examination and review~~.

~~The county engineer who~~ shall review the proposed location, both horizontal and vertical, of the proposed structures and the effect of the proposed improvements on any other improvements and on any highways in the area.

(C) The county engineer shall file, within sixty days, with the clerk of the board of county commissioners and the director of transportation or other public agency a report of the review with such recommendations for change, amendment, or alteration in the plans for the proposed improvement as the engineer may determine to be necessary in the public interest.

(D) When the plans for the proposed improvements as presented, or as amended pursuant to the county engineer's recommendations, are approved by the county engineer, the engineer shall file, within sixty days, a certificate of approval with the clerk of the board of county commissioners. If the engineer does not file such a report of ~~his~~ the engineer's review with the clerk within sixty days after

the date that the plans were referred to ~~him~~ the engineer, the engineer's approval shall be presumed by the clerk.

(E) The improvement shall then be constructed in accordance with the approved plans at the expense of the department of transportation or other public agency.

Sec. 6131.64. (A) Upon a petition being filed and a bond given as provided for the location and construction of an improvement, and upon the same proceedings with notice to interested parties for a hearing upon the petition, and with the same hearing as is provided for the location of an improvement, the board of county commissioners may determine whether any ditch or drain described in the petition has ceased to be a public utility, whether the public welfare no longer demands the maintenance thereof, and whether its vacation will be to the advantage of the public welfare.

(B) If the board finds that the vacation of the ditch or drain will be conducive to the public welfare, it may declare the same to be vacated and abandoned as a public ditch or drain and its location and establishment held for naught. The private rights of persons acquired by reason of the location and establishment of the ditch or drain shall not be interfered with nor impaired ~~thereby~~ without due compensation being made ~~therefor~~, which compensation may be assessed on property that is benefited by the vacation of the ditch or drain.

(C) All proceedings relating to the vacation of a ditch or drain shall be conducted in accordance with ~~sections 6131.01 to 6131.64 of the Revised Code~~ this chapter, with all rights of appeal as provided in such sections.

Sec. 6133.01. As used in ~~sections 6133.01 to 6133.11, 6133.14, and 6133.15 of the Revised Code, "owner,"~~ this chapter:

(A) ~~"Owner," "person," "public corporation," "land," "benefit," and "improvement" have the meaning set forth same meanings as in section 6131.01 of the Revised Code.~~

(B) "Lead county" means the county in which the majority of the initial length of a joint county drainage improvement would be located, as specified in an original petition filed under section 6133.02 of the Revised Code.

Sec. 6133.02. (A) When an improvement is proposed to be located in or benefits or damages land in two or more counties, the proceeding shall be conducted by a joint board of county commissioners consisting of the members of the boards of county commissioners of the several counties in which land may be benefited or damaged by the proposed improvement. ~~In such case, the~~

(B) ~~The petition for the a joint county drainage improvement shall be filed with the clerk of the board of county commissioners of the lead county in which the majority of the proposed improvement is located.~~

Sec. 6133.03. (A) A joint board of county commissioners may do all the things that a board of county commissioners may do in a single county improvement, and shall be governed by and be subject to sections 6131.01 to 6131.64 of the Revised Code, relating to single county ditches insofar as applicable. ~~The proceedings~~

(B) Except as otherwise provided for in this chapter, a petition for a joint county improvement shall proceed before the joint board of county commissioners the same as if the joint board were a board of county commissioners representing a county that included all the territory of all the counties represented by the commissioners on the joint board, except as otherwise modified in



accordance with this chapter. The

(C) The cost of a joint county improvement shall be paid by the counties affected by such improvement, in proportion to their total ditch-drainage assessments, or as otherwise apportioned by the joint board, for such improvement. To meet its portion of such cost, a board of county commissioners may borrow such sums of money as are apportioned to the county, and may issue and sell the bonds of the county to secure the payment of the principal and interest of the sum borrowed. Such principal and interest shall be paid as provided in section 133.26 of the Revised Code. All rights of appeal, and all other rights or remedies as provided in sections 6131.01 to 6131.64 of the Revised Code, apply to joint county improvements. All officers doing any acts or making any findings for or against such improvement shall perform all the duties required of them under such sections.

(D) All owners affected by the proceedings for a joint county improvement shall have all the rights and remedies given them in the case of single county improvements. The proceedings in joint county improvements shall be the same as the proceedings in single county improvements except as modified in sections 6133.02 to 6133.11 of the Revised Code. All rights of appeal and all other rights or remedies as provided in Chapter 6131. of the Revised Code apply to joint county improvements.

Sec. 6133.04. (A) On the date fixed by the clerk of the board of county commissioners with whom the petition was filed, the board of county commissioners from each of the counties affected by a proposed joint county improvement shall meet in the county in which the petition is filed and organize a joint board of county commissioners by electing one of their number president. The

(B) The clerk of the board of county commissioners of the lead county in which the petition is filed shall act as clerk and administrator of the joint board and shall enter the findings of the joint board in the journal of the board of county commissioners of his the clerk's county, shall do all things required to be done by the clerk, and shall make the final record of the improvement in his the clerk's county. The clerk shall file certified provide copies of all proceedings with the clerks of the boards of all affected counties. A

(C) A majority of the county commissioners constituting the joint board shall constitute a quorum. All decisions of the joint board shall be made by a vote of a majority of the county commissioners constituting the joint board. The

(D) The director of the department of natural resources shall be a member ex officio of the joint board and may participate, either in person or through a designated representative, in deliberations and proceedings of the joint board but shall have no vote except in case of a tie, in which case the proceedings shall be adjourned for thirty days, during which time the director shall review the proceedings and cast the deciding vote. The vote shall be recorded in the journal. After

(E) After the view of the a proposed improvement by the joint board of county commissioners, all hearings shall be held in the lead county in which the petition is filed unless a majority of the joint board of county commissioners agree to an alternative location.

(F) When the joint board of county commissioners is formed, the joint board of county commissioners shall be administered by the lead county's elected officials, including the lead county's county engineer, county recorder, county auditor, county prosecutor, common pleas judges, county treasurer, and clerk of the board of county commissioners.

Sec. 6133.041. (A) Notwithstanding any other provision of this chapter or Chapter 6131. of the Revised Code to the contrary, a joint board of county commissioners, when practicable, may

conduct ~~proceedings regarding existing improvements meetings~~ by video conference or, if video conference is not available, by teleconference. The joint board of county commissioners shall make provisions for public attendance at any location involved in such a ~~proceeding meeting~~. The ~~participation of any commissioner or board of county commissioners in a video conference or teleconference shall occur at the location of the commissioners' main office or board room~~ joint board shall establish the joint board's main office or board room as the primary meeting location for the video conference or teleconference. The conference shall be held at that location in an open meeting at which the public is allowed to attend.

(B) Before convening a meeting of a joint board of county commissioners by video conference or by teleconference, designated staff shall send, via electronic mail, facsimile, or United States postal service, a copy of meeting-related documents to each member of the joint board.

(C) The minutes of each joint county ~~ditch-drainage improvement~~ meeting shall specify who was attending by teleconference, who was attending by video conference, and who was physically present. Any vote taken in a meeting held by teleconference that is not unanimous shall be recorded as a roll call vote.

(D) Nothing in section 121.22 of the Revised Code prohibits a joint board of county commissioners from conducting a ~~proceeding meeting~~ in a manner authorized by this section.

Sec. 6133.05. ~~In the matter of an improvement under sections 6133.02 to 6133.11 of the Revised Code, there shall be included as a portion of the costs and expenses to be paid by the petitioners, if the petition authorized by section 6133.02 of the Revised Code is dismissed, or assessed to them as a part of the costs, if the petition is granted, the~~ (A) As used in this section, "actual expenses" means the actual expenses of the members of the joint board of county commissioners for the performance of their duties at places other than in their own county .

(B) If a petition filed under section 6133.02 of the Revised Code is dismissed, the actual expenses shall be paid by the petitioners.

(C) If a petition filed under section 6133.02 of the Revised Code is granted, the actual expenses shall be included in the costs of the project.

Sec. 6133.06. (A) ~~Upon the filing of the a petition authorized by under section 6133.02 of the Revised Code, the clerk of the board of county commissioners with whom the petition is filed of the lead county shall call a joint meeting of the boards of county commissioners of all the affected counties interested to be held at a designated place in the county in which the petition is filed affected area at a date not more than thirty days after the filing of the petition for the purpose of organizing the joint board. The~~

(B) The clerk of the lead county shall give notice of the filing of the petition and of the meeting to the board of his the clerk's county and shall mail the notice together with a copy of the petition to the clerks of the boards of the county commissioners of the other counties interested who shall immediately notify the boards of their counties of the filing of the petition and of the date fixed for the meeting of the joint board. All applications, remonstrances, claims for compensation or damages, reports, schedules, certificates, statements, contracts, bonds, and other papers shall be filed with the clerk with whom the petition is filed.

(C) The clerk of the lead county shall file certified copies of all proceedings and filings with the clerks of the boards of all affected counties.

Sec. 6133.07. ~~(A)(1)~~ The county auditor and county treasurer of the lead county ~~in which the petition authorized by section 6133.02 of the Revised Code is filed shall ex officio become~~ are the fiscal agents of all the counties interested in the proposed improvement. ~~Such~~

(2) The clerk of the joint board shall present bills for payment to the fiscal agents in the same manner as a request for payment would be made with respect to a single county drainage improvement.

(3) The fiscal agents shall process and pay each bill for the joint board of county commissioners presented.

(B) The auditor of the lead county shall certify to the auditor of the other counties a schedule of the assessments to be levied for the cost of locating and constructing the improvement and the auditor of such other county shall ~~proceed forthwith to~~ place such assessment upon the duplicates. The assessments so certified for collection to an auditor of another county shall be a lien on the land within such county from the date such certificate is received by the auditor of such other county. ~~The~~

(C) The treasurer of each county shall proceed to collect the ~~same assessments~~ pursuant to the orders made in said the proceedings for a joint drainage improvement, and ~~such shall pay the assessments when collected shall be paid to the treasurer of the lead county in which the petition was filed.~~ ~~The~~

(D) The auditor and the treasurer of the lead county shall receive and account for such funds in the same manner as they receive and account for assessments collected for single county improvements. ~~The treasurer and the auditor with their bondsmen bonders shall be liable on their official bonds for any misappropriation of such funds. All~~

(E) All warrants for the payment of costs of location and for costs of construction of a joint county improvement shall be drawn by the auditor of the lead county ~~in which the petition is filed~~, on the treasurer of ~~said the lead county~~, payable out of the general ditch drainage improvement fund of ~~said the lead county~~. ~~If the~~

(F) If a petition for ~~the a joint drainage~~ improvement is dismissed after the costs and expenses have been incurred in making the lead county engineer's reports and schedules provided for in section 6133.08 of the Revised Code, such costs shall be paid by the several counties respectively, as the joint board of county commissioners deems just and equitable. All assessments when collected in all the counties and any amount which another county should pay shall be paid into the treasury of the lead county ~~in which the petition was filed~~, and credited to the general ditch drainage improvement fund of ~~said the lead county~~.

Sec. 6133.08. (A) ~~The joint board may designate the county engineer of the lead county where the petition is filed to do~~ is responsible for the field work and shall make the survey, plans, and estimates, ~~but the~~ for the joint drainage improvement. The county engineer of each affected county ~~interested~~ shall assist in making the reports and schedules. All reports and schedules of the lead county's county engineer shall be signed and approved by all the county engineers of the several affected counties ~~interested~~ and shall be filed with the clerk ~~with whom the petition is filed of the lead county.~~ ~~If the engineers of the several counties interested do not concur in the reports or schedules, separate reports or schedules may be filed by one or more of the engineers, and the costs thereof shall be paid by the counties from which the separate reports or schedules are filed. In making up the schedules and reports the engineers shall proceed to make the schedules and reports of~~

~~the improvement the same as if the improvement were an improvement within a county of the size of the several counties interested in the proposed improvement. The engineers who do not make the survey may make such observations and take such levels as are necessary to assist them in making their schedules and in arriving at the proper amount to be assessed against each tract of land.~~

~~(B) The county engineer who did the field work and made the survey and plans of the lead county shall proceed to take bids, inspect the progress of the work and make estimates and reports on the progress of the work, accept the work and material for the improvement, and issue certificates therefor, as in the case of single county improvements, and shall do all things to be done by an engineer after the letting of the contracts under Chapter 6131. of the Revised Code.~~

Sec. 6133.09. (A) The hearing on the reports and schedules of the county engineers provided for by section 6133.08 of the Revised Code and all other proceedings relative to a proposed joint county improvement shall be had the same as in single county ~~ditches drainage improvements.~~  
Claims

~~(B) Claims for compensation for land taken or for damages to land may be appealed by an affected owner interested, or by the prosecuting attorney, to the court of common pleas of the county in which the land for which the owner claims compensation or damages is located. All~~

~~(1) All claims for compensation or damages which are allowed shall be paid out of the treasury of the county in which such land is located. The~~

~~(2) The county auditor of the lead county in which the petition is filed shall certify the amounts of compensation or damages so found by the joint board of county commissioners to the auditors of the other counties, respectively, for payment.~~

~~(C) If an appeal is taken on the question of compensation or damages, the auditor of the lead county in which the petition is filed shall transmit to the clerk of the court of common pleas of the county in which the land of the appellant is located the original papers relating to the claim for compensation or damages and a certified transcript of the findings on the improvement and on the claim, which shall be docketed by the clerk and shall proceed the same as an appeal on a claim for compensation or damages in a single county improvement proceeding.~~

Sec. 6133.10. (A) All appeals to the court of common pleas except appeals on claims for compensation or damages shall be heard by a panel of judges consisting of one judge of the court of common pleas from each of the affected counties interested, sitting en banc. If

(1) If the panel cannot reach a decision, the panel may request the addition of a judge from a court of common pleas in the area of the state in which the joint drainage improvement is located.

(2) The panel shall follow court opinions and precedent established by the appellate district in which the petition for the joint drainage improvement was filed.

(3) If a judge is disqualified or for any reason does not care or refuses to hear the a case, the chief justice of the supreme court shall designate a judge to sit in his the judge's place. Appeals

(B) All appeals on claims for compensation or damages shall be tried by jury as provided in sections 6131.01 to 6131.64, inclusive, Chapter 6131. of the Revised Code.

Sec. 6133.11. (A) ~~If the a joint board of county commissioners finds for the approves a proposed joint drainage improvement and but, at the final hearing for the improvement, is unable to agree upon on the amount to be assessed to each an affected county to be paid by the county because the improvement is for improvements conducive to the public welfare, or of benefit to public~~

highways or to land owned by ~~the~~ an affected county, ~~then such the~~ joint board shall by resolution state ~~the fact that such the~~ joint board is not able to agree ~~as to such fact~~ on the assessments. Upon

(1) Upon the adoption of ~~such the~~ resolution, the question shall be appealed to the court of common pleas as is provided in sections 6133.02 to 6133.11, ~~inclusive~~, of the Revised Code. ~~No~~

(2) No bond on appeal need be filed; and the resolution of the joint board ~~stating such inability to agree~~ shall be deemed the statement on appeal. The

(3) The clerk of the joint board shall perfect the appeal by filing a transcript, ~~including of the resolution of the joint board finding that the joint board cannot agree, with all of the original papers, in the court and the record of proceedings for the joint improvement.~~ The

(B) The court shall hear ~~such an~~ appeal under this section the same as other appeals under sections 6133.02 to 6133.11, ~~inclusive~~, of the Revised Code; and make such order as to costs as is equitable.

Sec. 6133.14. The state shall pay to the county treasurer of the lead county ~~in which the petition for a drainage improvement was filed~~ the assessment levied against it for the state's proportionate share of the cost of any improvement authorized or constructed under sections 6131.01 to 6131.64, 6133.01 to 6133.15, and 6135.01 to 6135.27 of the Revised Code and all unpaid assessments for maintenance as provided by sections 6137.01 to 6137.12 of the Revised Code.

Sec. 6137.01. As used in ~~sections 6137.01 to 6137.14, inclusive, of the Revised Code,~~ "owner," this chapter:

(A) "Owner," "benefit," "lead county," and "improvement," have the ~~meaning set forth same meanings as~~ in section 6131.01 of the Revised Code.

(B) "Force account" has the same meaning as in section 5543.19 of the Revised Code.

Sec. 6137.02. (A) The board of county commissioners of each county shall establish and maintain a fund within each county for the repair, upkeep, and permanent maintenance of each improvement constructed ~~under Chapter 6131. of the Revised Code. After after August 23, 1957, a maintenance fund also shall be established and maintained by each joint board of county commissioners for the repair, upkeep, and permanent maintenance of each improvement constructed under Chapter 6133. of the Revised Code. A maintenance fund shall also be established for the repair, upkeep, and permanent maintenance of each improvement constructed under Chapter 6135. of the Revised Code if the necessary privilege to do so has been granted by the legislature of the other state under Chapter 940., 6131., 6133., or 6135. of the Revised Code. If~~

(B) If the improvement affects only a single county of the state, the board of county commissioners of that county shall establish and maintain the fund. If two or more counties of the state are affected by the improvement, the joint board of county commissioners organized under ~~Chapter Chapters 940., 6133., and 6135. of the Revised Code shall establish and maintain the fund.~~

Sec. 6137.03. (A)(1) The maintenance fund shall be maintained, as needed, by an assessment levied not more often than once annually upon the benefited owners, ~~as defined in section 6131.01 of the Revised Code,~~ apportioned on the basis of the estimated benefits for ~~construction~~ all costs of the improvement. ~~An~~

(2) An assessment shall represent such a percentage of the estimated benefits as is estimated by the engineer and found adequate by the board or joint board to effect the purpose of section 6137.02 of the Revised Code, except that at no time shall a maintenance fund have an unencumbered

balance greater than twenty per cent of ~~all construction costs of the improvement~~ the permanent assessment base for maintenance established under section 6137.11 of the Revised Code. ~~The~~

~~(3)~~ The minimum assessment shall be two dollars.

~~The (B) A~~ maintenance assessment shall be made by the board of county commissioners in the case of a single county improvement, or by the joint board in the case of a joint of county improvement, commissioners upon the substantial completion of an a drainage improvement and on or before the first day of July in each year thereafter. The maintenance assessment shall be certified by the clerk of the board or joint board to the county auditor in case of a single county improvement, and to the county auditor of each affected county interested in the case of in a joint county improvement, and. The auditor or auditors shall be placed by the auditor or auditors place the assessment on the next succeeding tax duplicate to be collected and paid as other special assessments are collected and paid.

(C) With respect to a single county improvement, the county engineer shall inspect the drainage improvements in the county. On or before the first day of July of each year, the county engineer shall report to the board of county commissioners both of the following:

(1) The county engineer's findings regarding the present condition of the drainage improvements in the county;

(2) An estimate of the amount of funds necessary to repair and maintain the improvements for the following year.

With regard to a joint county improvement, the county engineer of each applicable county shall make such a report to the joint board.

(D)(1) The board shall use the county engineer's estimate to determine the annual drainage maintenance assessments, which shall be based on a percentage of the permanent assessment base.

(2) On or before the second Monday of September in each year, the board shall direct the county auditor or auditors, as applicable, to place the maintenance assessments on the tax duplicate.

(E)(1) With respect to a single county improvement, the county auditor shall place maintenance assessments received for a drainage improvement into the maintenance fund designated for the drainage improvement.

(2) With respect to a joint county improvement, the county auditor of each county that is not the lead county shall place maintenance assessments received for a drainage improvement into the maintenance fund designated for the drainage improvement. Twice a year, each county auditor of a county that is not a lead county shall transfer money in that fund to the county auditor of the lead county, who shall deposit the money into the joint drainage improvement's maintenance fund. The county auditor of the lead county shall place maintenance assessments received in the lead county for the drainage improvement into the joint drainage improvement's maintenance fund.

Sec. 6137.04. (A)(1) The board of county commissioners, upon recommendation of the county engineer, is hereby authorized to may combine improvements within the same watershed into a drainage maintenance district, in which the maintenance assessment shall be the same percentage of original cost for each improvement to be maintained. In grouping

(2) In combining improvements into drainage maintenance districts, the county engineer and the board of county commissioners shall consider uniformity similarity of costs, topography, and soil types so that improvements within the same district represent present substantially the same

~~maintenance problem issues and can be kept in proper repair at cost sufficiently uniform as to constitute no substantial inequity for any owners to be included in a district maintenance program costs.~~ The county auditor shall maintain one drainage maintenance fund for each such district. A

~~(3) A~~ maintenance district may include all or any part of a county.

~~(B)~~ The board of county commissioners, upon recommendation of the county engineer, may combine improvements in accordance with the type of improvement into one drainage maintenance fund so that ditches or drains that are enclosed in tile, or other improvements having similar maintenance costs, may be administered for maintenance under the same maintenance fund.

~~(C)(1)~~ In the case of each joint county ~~ditch drainage~~ improvement, the county auditor of the lead county having the majority of the improvement shall maintain a separate maintenance fund for the improvement. The

~~(2)~~ The owners subject to the original assessment for the improvement shall constitute one maintenance district for the purpose of repair, upkeep, and maintenance of the improvement.

~~(3)~~ The county engineer of the lead county having the majority of the improvement shall serve as the county engineer in charge of maintenance and, after consultation with the engineer of any other county affected, shall annually file a report of inspection with a recommendation as to the amount of the maintenance assessment by the same procedure as provided by section 6137.03 of the Revised Code for assessment in the case of a single county ~~ditch drainage improvement~~.

Sec. 6137.05. ~~(A)~~ The maintenance fund ~~created established~~ under authority of section 6137.01-6137.02 of the Revised Code shall be subject to use of the board of county commissioners, or joint board of county commissioners, ~~as the case may be,~~ for the necessary and proper repair or maintenance of any drainage improvement constructed under sections 6131.01 to 6131.64, 6133.01 to 6133.15, and 6135.01 to 6135.27 Chapters 940., 6131., 6133., and 6135. of the Revised Code.

~~(A)-(B)~~ Whenever the board, or the joint board, from its own observation or the recommendation of the county engineer or the lead county's county engineer, or on the written complaint of any ~~of the owners of lands owner of land~~ subject to the maintenance assessment, has reason to believe the improvement is in identified a need of for the repair or maintenance of a drainage improvement, it shall as a board, or by the county engineer, ~~make an inspection of its shall inspect the~~ condition, and, if it finds the need to exist, it shall make an estimate of the cost of the necessary work and material required for the purpose. If the nature of the work is such as to be done most economically and expeditiously by force account, the board shall cause the proper work to be done by that method under the supervision of the county engineer and certify the costs to the county auditor or county auditors for payment from the maintenance fund. If the finding is that necessary repair and maintenance on an improvement or improvements within a maintenance district can be more economically or efficiently done by contract, the board, or joint board in the case of a joint county improvement, shall cause the engineer to prepare proper specifications, covering the requirements for the particular case, to advertise for bids thereon, as in the case of original construction, under section 6131.24 of the Revised Code, and to let the contract for the required work and material to the lowest and best bidder, who, upon the performance of the work certified by the engineer, shall certify the same to the auditor or auditors for payment from the maintenance fund of the drainage improvement.

~~(B)~~ When the repair or maintenance is upon a joint county ditch improvement, the amount of

~~the cost thereof shall be certified to the auditor of each of the counties into which the ditch extends and has lands subject to the maintenance fund assessment, and the certificate shall state the proportional part of the cost to be paid from the portion of the maintenance fund in the county, according to the original apportionment of benefits on the owners in the county subject to maintenance assessment. Upon the certificates being received, the auditors of the counties obligated shall immediately forward their several amounts or vouchers therefor to the auditor of the county having the majority of the improvement through whose office, from the aggregate payments of all the counties interested, the payment for the work and material, whether by force account or contract, shall be paid. The location of the work required on a joint county improvement, whether in one county or another, or whether extending into two or more counties, shall not affect the obligation of contribution for any necessary work upon the improvement in any portion of its length wherever located, the improvement for maintenance purposes being considered a single unit. As far as applicable, the procedures provided by section 6133.08 of the Revised Code with respect to cooperation of county engineers in field work shall apply to maintenance of joint county improvements.~~

~~The repair and maintenance on any improvement may be done in part by contract and in part by force account, it being the duty of the board of county commissioners, or the joint board of county commissioners, and the county engineer to use the best and most economical methods under local conditions for the various phases of the maintenance program, such as excavating, clearing, cleaning, snagging, physical and chemical control of land and aquatic vegetation, and repair of banks and structures.~~

~~(C) If the county engineer finds that the drainage improvement is in need of repair or maintenance, the county engineer shall do all of the following:~~

~~(1) Make an estimate of the cost of the necessary work;~~

~~(2) Determine the most efficient and economical manner to complete the work, including conducting the work in various phases if determined necessary. The county engineer shall take into account local conditions that may pertain to a maintenance program such as excavation, snagging, clearing, cleaning, physical and chemical control of vegetation, and reparation of banks and structures. The county engineer may determine whether the work shall be performed by force account, contract, or a combination of the two. However, if a contract is used for the work, the county engineer shall comply with sections 307.86 to 307.92 of the Revised Code.~~

~~(3) Determine a schedule for completion of the work subject to the availability of funds in the appropriate maintenance fund;~~

~~(4) Certify the actual cost of completion of the work to the county auditor or lead county's county auditor for payment from the appropriate maintenance fund.~~

~~(D) The board or joint board and the county engineer may contract with a soil and water conservation district for the repair, upkeep, and permanent maintenance of any drainage improvement for which the county engineer is responsible, whether as the county engineer or as the lead county engineer.~~

Sec. 6137.051. (A) Whenever the owner of any lands assessed for construction of an improvement authorized prior to August 23, 1957, files a written complaint that the improvement is in need of repair, the county engineer or ~~his~~ the county engineer's designated representative shall



make an inspection of the condition of the improvement within sixty days of receipt of the complaint and shall request the owner to ~~accompany him~~ be present at the inspection. If

(B) If the county engineer finds that a need exists, ~~he the county engineer~~ shall make an estimate of the cost of the necessary work and material required for the repair. ~~The~~

(C) The board of county commissioners, if it finds the work to be necessary and feasible, may authorize the county engineer to make the repairs at a cost not to exceed ~~four~~ twenty-four thousand dollars. ~~For~~

(D) For the purpose of paying for the necessary work and materials, the board of county commissioners may establish a drainage repair fund for the improvement to be repaired. The county engineer shall prepare and submit a schedule of assessments upon the benefiting lands to the board of county commissioners in the amount of the actual costs of the repair. The board of county commissioners may revise the estimated assessments as they consider equitable and shall certify the assessments to the county auditor for collection. ~~Not~~

(E) Not more than ~~four~~ ten semiannual installments, as taxes are paid, shall be given to owners to pay for the repair assessments, and if any such assessment is twenty-five dollars or less, or whenever the unpaid balance of any such assessment is twenty-five dollars or less, the same shall be paid in full, and not in installments, at the time the first installment would otherwise become due. ~~If the drainage repair fund for the improvement to be so repaired is inadequate for the repair, the board of county commissioners may make payment for the repair from the county general fund, which sum so paid from the general fund shall be a charge against the appropriate drainage maintenance fund to be repaid to the general fund as soon as adequate funds are available in the drainage maintenance fund.~~

Sec. 6137.06. ~~The~~ (A) With regard to a single county improvement, the county engineer shall have ~~has~~ general charge and supervision of the repair and maintenance of all county ~~and joint county~~ ditches, drains, watercourses, and other drainage improvements ~~within his county~~ constructed under sections 6131.01 to 6131.64, 6133.01 to 6133.15, 6135.01 to 6135.27, and 6137.051 ~~Chapters 940., 6131., 6133., and 6135. of the Revised Code. The county engineer shall make an inspection of the drainage improvements and, on or before the first day of June in each year, shall report to the board of county commissioners the condition of the drainage improvements and his estimate of the probable amount of funds required to repair and maintain them. The estimates shall relate to the year beginning on the first day of July next ensuing and shall be for the information of the board of county commissioners in making their annual drainage maintenance levies.~~

~~The engineer shall approve all estimates that are paid from the county drainage maintenance fund for the repair and maintenance of drainage improvements. With regard to a joint county improvement, the lead county engineer has general charge and supervision of the repair and maintenance of all joint county drainage improvements constructed under Chapters 940., 6131., 6133., and 6135. of the Revised Code.~~

(B) The duties of the county engineer with respect to maintenance of any drainage improvement begin upon the substantial completion of the improvement. In preparing plans and specifications for repair and maintenance of a drainage improvement, the county engineer shall provide for necessary clearing of tree and brush growth, removal of silt bars, spreading and leveling of spoil banks, and the preservation of a sod or seeded strip as provided in the case of new

construction under section 6131.14 of the Revised Code.

~~(C) Any number of persons person~~ owning land along a ditch, drain, watercourse, or other drainage improvement may form an advisory committee for the purpose of notifying the county engineer of any repair and maintenance work that needs to be performed on the improvement. A committee formed for this purpose shall submit ~~their~~ recommendations to the county engineer not later than the first day of May of any year in which its members desire to notify ~~him~~ the county engineer of needed work. In determining the condition of the improvement in accordance with this section, the county engineer shall consider the committee's recommendations.

~~The county auditor, before he issues his~~ (D) Before issuing a warrant for any moneys expended by the county for repair or maintenance of any drainage improvement, the county auditor shall require of the county engineer the assignment of the expense to the improvement or the drainage maintenance district in connection with which the expense was incurred. The county auditor shall keep such records as are necessary to show clearly at the close of each year the amount of money expended from the drainage maintenance funds on each drainage improvement or each drainage maintenance district.

~~(E) The county auditor shall~~ may establish and maintain a rotary fund for the purchase of equipment, materials, and labor related to the general maintenance of ~~watercourses~~ drainage improvements under ~~Chapter 6137. of the Revised Code~~ this chapter. ~~This~~ The county auditor shall establish and maintain the fund shall be established and maintained by a proportionate withdrawal from the funds of each drainage improvement or each drainage maintenance district.

~~(F) The county engineer shall~~ establish a rental rate for equipment purchased with ~~this~~ the rotary fund. This rate shall be used in charging the equipment, along with material and labor, to the drainage improvement upon which it is used in order to reimburse the rotary fund.

~~The duties of the county engineer with respect to maintenance of any drainage improvement shall begin upon the substantial completion of the improvement.~~

~~In preparing plans and specifications for repair and maintenance of open ditches and in carrying out the plans either by contract or force account, the county engineer shall provide for necessary clearing of tree and brush growth, removal of silt bars, spreading and leveling of spoil banks, and the preservation of a sod or seeded strip as provided in the case of new construction under section 6131.14 of the Revised Code, in addition to the various phases of maintenance set forth in section 6137.05 of the Revised Code.~~

~~Sections 6131.01 to 6131.64 of the Revised Code apply to the maintenance fund with respect to receiving bids, statements required in bids, letting contracts, competitive bidding, time allowed under contract, supervision of contractor's work, certification for payment, and other related matters.~~

Sec. 6137.07. (A) As used in this section, "drainage equipment" means machinery, tools, conveyances, or other equipment for the repair and maintenance of drainage improvements a board of county commissioners considers necessary.

(B) The board of county commissioners may purchase such machinery, tools, conveyances, or other do both of the following:

(1) Purchase drainage equipment for the repair and maintenance of drainage improvements under its jurisdiction as it considers necessary;

(2) Provide a suitable place to house and store the drainage equipment.

~~All such machinery, tools, conveyances, or~~ The county engineer shall be responsible for the care and custody of the drainage equipment shall be under the care and custody of the county engineer and shall be plainly and conspicuously ~~marked~~ mark it as the property of the county. The

~~(C) The county engineer shall annually, on the first day second Monday of June January,~~ make an inventory of ~~all such items~~ the drainage equipment, indicating each article and stating ~~the its~~ estimated value thereof, and deliver the inventory to the board, ~~which of county commissioners.~~ The board shall cause it to be placed keep the inventory on file. At the same time he shall ~~The county engineer may file with the board his written recommendations as to what machinery, tools, conveyances, and with the board for drainage equipment that should be purchased for use in the county drainage maintenance program during the ensuing year and the its estimated cost thereof.~~

~~The board shall provide a suitable place for housing and storing machinery, tools, conveyances, and equipment owned by the county.~~ (D) All expenditures authorized by this section shall be paid out of the drainage maintenance fund or funds. If the drainage maintenance fund at any time is inadequate for such purchase or other expenditure, the board of county commissioners is authorized to make the payment from the county general fund, which sum so paid from the general fund shall be a charge against the drainage maintenance fund or funds to be repaid to the general fund as soon as adequate funds are available in the drainage maintenance fund or funds.

Sec. 6137.08. ~~Any~~ (A) An owner may make application for reduction in ~~his~~ the owner's maintenance assessment due to work ~~he the owner~~ proposes on any portion of a public ditch, watercourse, or other improvement. The application shall be filed with the county engineer on or before the first day of May in any year and shall state the nature of the work to be done, such as clearing brush, removing silt or debris, repair of structure, or other work necessary to preserve the improvement. The

(B) The county engineer, in making inspections of the drainage improvements, shall note the extent to which any owner that has applied for a reduction of the maintenance assessment under division (A) of this section has carried out such repair and maintenance work. In

(C) In making the annual report and estimate to the board of county commissioners, the county engineer shall include a schedule containing the name of each owner who has applied for reduction of maintenance assessment due to performance of repair and maintenance work under division (A) of this section and the percentage reduction, if any, that the county engineer recommends be granted to each owner. The

(D) The board of county commissioners shall either confirm or reject the allowances recommended by the county engineer. The allowance confirmed as to each land owner shall be certified to the county auditor, who shall reduce the next annual maintenance assessment of the owner by the percentage so certified.

Sec. 6137.09. (A) The board of county commissioners may grant to any owner a reduction of not more than fifty per cent of his the owner's annual maintenance assessment provided that the owner shall have filed with the county engineer a certificate of the board of supervisors of the soil conservation district of the county in which the land is located, certifying that he the owner is following practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and the erosion of sediment and silt into drainage channels. The certificate shall be signed by the president and the secretary-treasurer of the soil and water conservation district board of

supervisors and it shall remain in effect until canceled by the board of county commissioners. The

~~(B) The county engineer shall have the right to~~ may inspect the premises of any owner claiming assessment reduction due to soil and water conservation and to ask the soil conservation district for review of any certificate on file.

~~(C) At the time he the county engineer makes his the~~ annual report and estimate of maintenance costs, the county engineer shall transmit to the board of county commissioners all soil and water conservation certificates that ~~have been were~~ filed with ~~him~~ the county engineer. The

~~(D) The~~ clerk of the board of county commissioners, on or before the first day of ~~July~~ August in each year, shall file with the county auditor a list of owners who have been ~~certified by the soil conservation district for a fifty per cent~~ granted a reduction in maintenance assessment for the current year under this section.

Sec. 6137.10. If the cleaning out or repair of a ditch, drain, or watercourse, repair or replacement of tile, or repair of any abutment, catch basin, retaining wall or other improvement is made necessary in whole or in part by the negligent acts or omissions of ~~any an~~ owner, the board of county commissioners ~~after shall conduct a hearing subsequent to thirty days notice regarding the acts or omissions. The board shall give notice of the hearing thirty days prior to the hearing pursuant to the provisions of section 6131.07 of the Revised Code. After the hearing, the board may add to the maintenance assessment of such the negligent owner an additional repair assessment in an amount sufficient to rectify the damage. Such The added assessment shall be made on recommendation of the county engineer and certified to the county auditor at the same time the annual maintenance assessment is certified by the board.~~

Sec. 6137.11. ~~(A) The original schedule of benefit assessments upon owners for the construction of any improvement shall be maintained by the county auditor as the permanent assessment base for maintenance assessments. The county auditor shall levy the maintenance assessments shall be levied by the county auditor in such percentage of the permanent assessment base as is authorized by the board of county commissioners.~~

~~The board of county commissioners, before~~ (B) Before certifying the percentage of the permanent assessment base to be levied in any one year for the ~~drainage~~ maintenance fund, the board of county commissioners shall consider any recommendation by the county engineer and any application by ~~any an~~ owner for increase or reduction of the permanent assessment base as it applies to ~~any an~~ owner.

~~Any such increase or reduction of the permanent assessment base with respect to any owner shall be made for the purpose of correcting any inequity that has arisen due to increase or decrease in the proportionate share of benefits accruing to the owner as the result of the construction and maintenance of the improvement.~~

(C)(1) After six annual maintenance fund assessments have been made upon the owners benefiting from an improvement, the board of county commissioners shall review the permanent assessment base for ~~maintenance fund assessment~~ and may increase or decrease the respective benefit apportionments in accordance with changes in benefits that have occurred during the intervening six years.

As soon as (2) Any increase or reduction of the permanent assessment base with respect to an owner shall be made for the purpose of correcting an inequity that has arisen due to increase or

decrease in the proportionate share of benefits accruing to the owner as the result of the construction and maintenance of the improvement.

(3) If the board of county commissioners has changed or proposes changes to the permanent assessment base of maintenance assessments of any an owner, the clerk board shall conduct a hearing on those changes. The board shall conduct the hearing not less than twenty nor more than thirty days from the date the proposed changes are to be adopted.

(4) The clerk of the board shall send to each owner in the area benefited by the improvement a notice by certified mail, return receipt requested, or by first-class mail in a five-day return envelope. For each improvement, all individual notices shall be sent by the same type of mail. Whichever method the board chooses, with the words "Legal Notice" shall be printed in plain view on the face of the envelope. The notice shall state clerk shall include in the notice a statement of the amount of the present permanent assessment base for maintenance assessment, the proposed new permanent assessment base amount with respect to each owner so changed, and the date of a hearing on the change. The hearing shall be set by the board for a date not less than twenty nor more than thirty days from the date of adoption of the changes.

(D) At the expiration of six years from the date of the first review of the permanent assessment base of maintenance assessments, and at six-year intervals thereafter, the board of county commissioners shall may again review the permanent assessment base and shall set a hearing on any proposed changes by in accordance with the procedure provided procedures established in division (C) of this section for the first such review.

(E) The board of county commissioners at any time may add to the schedule of benefited owners any other owner who, in the judgment of the board, is benefited by the operation and maintenance of the improvement as the result of new conditions that have arisen since the improvement was constructed. The additional clerk of the board shall provide such an owner shall be given notice in writing of his the owner's permanent maintenance fund assessment base and the date of a hearing by the same procedure as provided by in accordance with the procedures established in division (C) of this section for any owner whose permanent assessment base has been changed by the board. Notice to the additional such an owner shall be sent by the same type of mail as the board uses for owners whose permanent assessment base has been changed.

The (F) A hearing on the changes in, or additions to, the permanent assessment base for maintenance assessment may be adjourned from time to time by the board of county commissioners and, upon conclusion of the hearing, the revised permanent assessment base shall be certified to the county auditor and shall become the permanent assessment base for maintenance assessments, except as changed from time to time with respect to individual owners.

(G) If the board of county commissioners finds that any owner was not assessed for the construction of an improvement, but now is receiving substantial benefit therefrom, or was assessed for construction, but now is receiving substantially greater benefits therefrom, the board may after providing a thirty days day notice pursuant to section 6131.07 of the Revised Code, may hold a hearing and determine an equitable amount as an equalization assessment to be paid by the owner. The equalization assessment shall be divided into the same number of payments as the assessments for the construction of the improvement, and the payment shall be added to the next succeeding maintenance assessments of the owner until the entire amount of the equalization assessment has

been paid.

(H) Any owner affected by an increase in the permanent assessment base as it applies to ~~him~~ the owner, or who has been added to the schedule of benefited owners, or who has been determined to be subject to an equalization assessment, all as provided in this section, may appeal to the court of common pleas from a final order made by the board of county commissioners, in the manner provided by sections 6131.25 to 6131.36 of the Revised Code, the question of whether any such assessment is levied according to benefits.

(I) In the case of drainage maintenance districts for which the board of county commissioners has authorized a single ~~drainage~~-maintenance fund, a review of the permanent assessment base ~~of maintenance assessments~~ shall be made not later than six years after the creation of the drainage maintenance district, and at six-year intervals thereafter, by the same procedure as provided by this section for review of the permanent assessment base with respect to a single improvement, and it shall not be necessary to review the entire ~~maintenance~~-permanent assessment base for any improvement included in the maintenance district until the board reviews the ~~maintenance~~-permanent assessment base for the entire district.

Sec. 6137.111. (A) In lieu of the permanent assessment base and procedure specified in section 6137.11 of the Revised Code, the board of county commissioners may by resolution levy upon the benefited property assessments apportioned according to tax value. The assessments shall be in the amount determined by the board to be necessary to obtain funds for the ~~ditch~~-maintenance fund.

(B) Prior to the adoption of ~~the a~~ resolution levying the assessments, the board shall give at least ten days' notice in one newspaper of general circulation in the county, which shall state the time and place when and where the resolution shall be taken up for consideration. At that time and place or at any adjournment thereof, of which no further published notice need be given, the board shall hear all persons whose properties are proposed to be assessed, shall correct any errors and make any revisions that appear to be necessary or just, and may then pass a resolution levying upon the properties determined to be benefited such assessments as so corrected and revised.

(C) Any owner of property to be so assessed may appeal to the court of common pleas from the resolution made by the board of county commissioners, in the manner provided by sections 6131.25 to 6131.36 of the Revised Code, the question of whether any such assessment is levied according to benefits.

(D) The assessments levied by the board's resolution shall be certified to the county auditor for collection as other taxes in the year or years in which they are payable. Any increase or reduction of the assessments levied under this section shall be made at the regular six-year reappraisal of all property in the county under section 5713.01 of the Revised Code or through adjustments made for property divisions, improvements, and changes.

Sec. 6137.112. (A) At the time that the board of county commissioners reviews the permanent assessment base of an improvement ~~for maintenance fund assessments~~ after six annual ~~maintenance fund~~ assessments have been made as provided in section 6137.11 of the Revised Code, the board may request the county engineer to estimate the construction cost of the improvement if that improvement were to be constructed at the time of the permanent assessment base review. Not less than thirty days prior to a hearing at which the board will consider the estimate as the

construction cost of the improvement, the clerk of the board shall send to each owner that would be affected a notice by certified mail, return receipt requested, or by first class mail in a five-day return envelope. For each improvement, all individual notices shall be sent by the same type of mail. Whichever method the board chooses, the words "legal notice" shall be printed in plain view on the face of the envelope. The notice shall state the amount of the present permanent assessment base ~~for maintenance assessment~~, the proposed new permanent assessment base amount with respect to the owner, and the date of the hearing on the proposed change.

(B) The board of county commissioners, by adoption of a resolution at the hearing required under division (A) of this section, may approve the ~~estimate as the construction cost of the improvement~~ permanent assessment base, as determined by the county engineer according to division (B)(5) of section 6131.14 of the Revised Code in lieu of the original ~~construction cost~~ of the improvement. If approved, the ~~estimate total estimated cost of construction cost the improvement~~ shall be the permanent assessment base that is used to calculate maintenance fund assessments for owners benefiting from the improvement. The approved estimate of ~~construction cost the improvement~~ shall serve as the permanent assessment base for the purposes of this chapter until such time as it is revised in accordance with this section.

Sec. 6137.12. (A) In the cleaning, repair, and other maintenance work on drainage improvements, the persons whose duty it is to perform the maintenance work may go upon the adjoining or abutting lands within the permanent easement necessary for proper operation of the required machinery, tools, motor vehicles, conveyances, or other equipment.

(B)(1) In the case of open ditches, the permanent easement so used shall be not more than twenty-five feet from the top of the bank, measured at right angles thereto, and wherever practical the area so used shall be on one side of the ditch only. ~~When in his opinion~~

(2) In the case of an open ditch log-jam removal project within a wooded riparian corridor, a maintenance easement may be created from the top of the bank to twenty-five feet outside of the edge of the wooded riparian corridor.

(3) When the county engineer determines that an emergency situation exists at an open ditch needing maintenance, the county engineer may, with the approval of the board of county commissioners, temporarily extend the easement to not more than seventy-five feet from the top of the bank, measured at right angles thereto, in order to conduct the necessary maintenance work and alleviate the condition or conditions causing the emergency situation. ~~The~~

(C) The maximum width of permanent easement for closed ditches shall not exceed eighty feet centered on the centerline of the improvement. ~~The~~

(D) The permanent easement for all other improvements shall be as located and the width as specified by the county engineer. ~~When~~

(E) When the performance of maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall be granted submit a written request for payment for damages to the county engineer. The county engineer shall award the crop owner damages equal to market value, to be paid from the permanent maintenance fund established for the improvement. ~~Under~~

(F)(1) Under contract work, the county engineer may specify the right-of-way to be used within the permanent easement. Where the nature of the surface of the adjoining or abutting land

does not prevent it, and there are growing crops on one side of the ditch but none upon the other, the right-of-way provided for shall be used on that side of the ditch on which there are no growing crops.

~~It~~ (2) In using the right-of-way, the persons performing maintenance shall, as far as possible, avoid damage to the owner of the adjoining or abutting lands.

(3) If in the doing of this work it is necessary to damage or temporarily remove any fences, poles, or wire lines, the cost of repairing, removing, and replacing the fences, poles, and wire lines shall be included in the total cost of the maintenance.

(G) This section does not authorize passage across, along, or between railroad tracks until thirty days after notice has been mailed in accordance with section 6131.07 of the Revised Code.

Sec. 6137.13. That part of interstate ~~ditches~~ drainage improvements within the state may be cleaned or repaired pursuant to sections 6137.01 to 6137.12, ~~inclusive~~, of the Revised Code. ~~Such sections shall apply insofar as they are applicable.~~

Sec. 6137.14. The county engineer, in inspecting drainage channels, shall note any and all apparent violations of sections 6111.01 to 6111.04 of the Revised Code, as such sections refer to the pollution of drainage channels. Whenever it appears to the county engineer, ~~after investigation~~, that there ~~has been~~ may be a violation of section 6111.04 of the Revised Code, the county engineer shall ~~give written notice to~~ notify the ~~county board of health~~ director of environmental protection, setting forth any thing or act done or omitted to be done or claimed to be in violation of such section. The ~~county board of health~~ director shall immediately pursue the alleged violation to its legal conclusion.

SECTION 2. That existing sections 305.31, 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.10, 940.11, 940.12, 940.13, 940.19, 940.20, 940.21, 940.22, 940.23, 940.26, 940.29, 940.31, 940.32, 940.33, 940.34, 940.35, 6131.01, 6131.04, 6131.05, 6131.06, 6131.07, 6131.08, 6131.09, 6131.10, 6131.11, 6131.12, 6131.13, 6131.14, 6131.15, 6131.16, 6131.17, 6131.19, 6131.21, 6131.22, 6131.23, 6131.24, 6131.25, 6131.27, 6131.28, 6131.30, 6131.32, 6131.33, 6131.34, 6131.36, 6131.42, 6131.43, 6131.47, 6131.50, 6131.51, 6131.52, 6131.55, 6131.57, 6131.60, 6131.63, 6131.631, 6131.64, 6133.01, 6133.02, 6133.03, 6133.04, 6133.041, 6133.05, 6133.06, 6133.07, 6133.08, 6133.09, 6133.10, 6133.11, 6133.14, 6137.01, 6137.02, 6137.03, 6137.04, 6137.05, 6137.051, 6137.06, 6137.07, 6137.08, 6137.09, 6137.10, 6137.11, 6137.111, 6137.112, 6137.12, 6137.13, and 6137.14 of the Revised Code are hereby repealed.

SECTION 3. That sections 940.18, 940.24, 940.25, 940.26, 940.27, 940.28, 940.29, 940.30, 6131.18, 6131.26, 6131.29, 6131.35, 6131.44, 6131.48, 6131.49, 6131.56, and 6131.62 of the Revised Code are hereby repealed.

SECTION 4. A petition filed under section 6133.02 of the Revised Code pending approval by a joint county board of county commissioners on the effective date of this section is subject to the provisions of Chapter 6133. of the Revised Code that existed prior to the effective date of this section and shall be considered by the joint county board of county commissioners that existed prior to the effective date. Any petition filed under section 6133.02 of the Revised Code after the effective date



of this section is subject to Chapter 6133. of the Revised Code as amended by this act.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_