



COUNTY ADVISORY BULLETIN

CAB

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Bulletin 2021-01

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PETITION DRAINAGE REFORM

INTRODUCTION

APPLICABLE LEGISLATION: House Bill 340 (133rd General Assembly)

REVISED CODE SECTIONS: 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

LEAD SPONSOR: House Speaker Bob Cupp

HOUSE COSPONSORS: Hambley, Patterson, Riedel, Seitz, Blair, Ginter, Carfagna, Carruthers, Clites, Cross, Fraizer, Galonski, Green, Grendell, Hicks-Hudson, Jones, Lanese, LaRe, McClain, Patton, Perales, Richardson, Rogers, Russo, Sheehy, Stein, Stephens, West, Wiggam, Sykes

SENATE COSPONSORS: Hackett, Antonio, Blessing, Brenner, Burke, Coley, Craig, Eklund, Fedor, Gavarone, Hoagland, Kunze, Lehner, Peterson, Rulli, Thomas, Wilson, Yuko

EFFECTIVE DATE: March 24, 2021

BULLETIN SUMMARY

On March 24, 2021, House Bill 340 will take effect. The legislation is a broad-based modernization of Ohio's petition drainage statutes. Petition drainage provides a statutory process for landowners, municipalities, townships, boards of commissioners and others to address drainage challenges through county government. The process involves many local officials including county commissioners, county engineers, soil and water conservation district personnel and others at the county level. These individuals work together throughout the drainage petition process as petitions are filed and projects are proposed, reviewed, constructed and maintained.

BACKGROUND

The Ohio Drainage Law Revision Task Force was established in October 2013 to review and modernize Ohio's petition drainage statutes. Union County Commissioner Steve Stolte served as the chairman of the task force. Joining Commissioner Stolte on the task force were representatives from the County Engineers Association of Ohio, Ohio Soil and Water Conservation districts, Ohio Farm Bureau Federation, Ohio State University Extension, County Auditors Association of Ohio, and the Ohio Department of Agriculture.

The task force was charged with the following objectives:

1. Seek the input of those with experience in the petition drainage process to determine how the process could be improved;
2. Clarify the statutory processes to remove ambiguity which has caused varied interpretations;
3. Parallel the statutory processes as much as possible whether a petition is filed with a board of county commissioners (ORC 6131); joint board of county commissioners (ORC 6133) or soil and water board of supervisors (ORC 940);
4. Implement the use of modern technology to view projects, survey, and provide information to the petitioners and general public.

The task force worked for over six years compiling recommendations and drafting updated statutes to modernize Ohio's petition drainage process. The completed product of those efforts is HB 340, which was introduced in September 2019.

Petition drainage statutes in Ohio trace back to the mid-19th century. Over time the process developed further with additional changes enacted beginning in the 1950s. However, these changes did not keep pace with changing technology and practices. The result was a petition process that was complex, ambiguous and outdated. HB 340 modernizes these statutes to create a petition process that is simpler, more streamlined, and one that avoids unnecessary legal expense.

ADVISORY BULLETIN FORMAT

HB 340 is an expansive act that is broad in scope and makes numerous updates and nuanced changes to the petition drainage process. To convey this information in an orderly format, the

advisory bulletin is divided into four primary sections that reflect changes made to the four Ohio Revised Code chapters covered by HB 340:

- I. SOIL AND WATER CONSERVATION DISTRICT IMPROVEMENTS – *R.C. Chapter 940*
- II. SINGLE COUNTY DRAINAGE IMPROVEMENTS – *R.C. Chapter 6131*
- III. JOINT COUNTY DRAINAGE IMPROVEMENTS – *R.C. Chapter 6133*
- IV. DRAINAGE MAINTENANCE AND REPAIRS – *R.C. Chapter 6137*

Under each section, readers will find subsections that congregate the changes enacted by HB 340 into specific categories, such as:

- A. PETITION FILING
- B. VIEW OF PROPOSED IMPROVEMENT
- C. HEARING ON PROPOSED IMPROVEMENT

Under each subsection, specific provisions impacted by HB 340 are detailed in a format of previous law versus how HB 340 changes these provisions. The bulletin outlines its changes in a manner that attempts to follow the traditional petition process, beginning with petition filing and concluding with appeals.

Example:

Filing of petition with board of county commissioners

Previous law: Authorizes an owner to file a petition with the clerk of the board of county commissioners requesting the construction of an improvement.

HB 340: Maintains this ability but now requires the owner, prior to filing a petition, to consult with the county engineer to discuss the proposed improvement and determine the proper forms and procedures (*R.C. 6131.04(A)*).

I. SOIL AND WATER CONSERVATION DISTRICT IMPROVEMENTS

ORC 940 establishes the process by which a soil and water conservation district implements a petition drainage project. The process for proposing and approving the project generally follows the following steps:

1. The filing of a petition for the improvement by a property owner with the board of supervisors of the district;
2. A scheduled view of the proposed improvement;
3. The preparation of a preliminary report by a board of supervisors regarding the proposed improvement;
4. A hearing by the board of supervisors on the proposed improvement;
5. Estimates of the costs of the improvement and benefits to property owners;
6. After approval by the board of supervisors, a project survey and design for the improvement;
7. A schedule of damages, costs, and assessments;
8. A hearing by the board of county commissioners;
9. Approval or disapproval by the board of county commissioners; and
10. Imposition of assessments and execution of the improvement.

HB 340 retains the basic structure for approving and implementing an improvement but makes numerous changes to the procedures and requirements that underlie the structure. The following changes summarize the differences between previous law and the enacted HB 340.

A. PETITION FILING

Filing of petition with board of soil and water conservation districts

Previous law: Authorizes a landowner to file a petition with the board of supervisors for a conservation work of improvement.

HB 340: Maintains the ability of land owner to file petitions with a soil and water conservation district, but now requires the owner, prior to filing a petition, to consult with the district to discuss the proposed improvement and determine the proper forms and procedures (*R.C. 940.19(A)*).

Petition information

Previous law: No provision.

HB 340: Establishes new requirements for the content of petitions filed with a soil and water conservation district. Petitions are required to include the following information:

1. A statement on the nature of the work for which the petition is filed, including removing obstructions for a ditch;

2. A description, including location, of the course and termini of the proposed improvement;
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 (*R.C. 940.19(B)*).

Petition Rejection Notification

Previous law: If a board of supervisors rejects a petition, the board must notify the petitioner of the reasons for the rejection.

HB 340: Requires that should a petition be rejected, the soil and water conservation district board of supervisors must inform the petitioner in writing (*R.C. 940.19(D)(2)*).

B. VIEW OF PROPOSED DRAINAGE IMPROVEMENT

View of proposed improvement

Previous law: The view is to be held 25-90 after petition is filed.

HB 340: Requires the view to be between 30 and 90 days after the date the petition was accepted (*R.C. 940.19(E)(1)*).

Notice of view

Previous law: Notice of the view to be sent to owners at least 20 days prior to the view.

HB 340: Requires the notice of the view be sent 21 days prior to the view. (*R.C. 940.20(A)*).

Contents of view notice

Previous law: No provision.

HB 340: Requires the content of the view notice to contain all of the following:

1. The date, time, and location for the view and 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 an owner may file, not more than 21 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 owner receiving the notice may comment on the proposed improvement in writing before or in person at the hearing on the petition; and
6. The address at which to file an amendment to the petition or submit written comments on the proposed improvement (*R.C. 940.20(A)*).

The view

Previous law: Regarding the view, requires the following:

1. Meet at a designated location near the proposed improvement;
2. Hear proof of the need of the proposed improvement from affected landowners; and
3. View the area in which the proposed improvement is to be constructed.

HB 340: Instead, requires the following steps to be followed by the board of supervisors or its designee during the view:

1. Present an overview of the proposed improvement;
2. In the presentation, use methods and means that the board determines will adequately inform those attending about the proposed improvement's location and the drainage issues intended to be addressed by the proposed improvement; and
3. Upon request made at the view of a board member or an owner in the area to be benefited by the proposed improvement, recess the view and reconvene at a site along the proposed improvement for the purpose of gaining additional information about the drainage issue to be addressed by the improvement (*R.C. 940.21(B)*).

C. HEARING ON PROPOSED IMPROVEMENT BY BOARD OF SUPERVISORS

Establishment of hearing of proposed improvement

Previous law: Requires board of supervisors to hold hearing not later than 90 days after view.

HB 340: The view is to be held between 30 and 90 days after the view (*R.C. 940.19(E)(2)*).

Adjournment of hearing – subsequent review

Previous law: If modifications or alternatives were discussed at hearing, allows for adjournment of the hearing for a subsequent view in light of proposed changes and established notice requirements for the secondary view.

HB 340: Instead, authorizes the recess and continuation of the hearing on subsequent days without requiring an additional view (*R.C. 940.23(B)*).

Hearing – vote of the board

Previous law: Authorizes the board to approve the petition at the conclusion of the hearing.

HB 340: Same, but requires the board to vote and adds the following required factors for the board to consider before its vote:

1. The petition;
2. The preliminary report;
3. Comments on the proposed improvement; and
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 (R.C. 940.23(C)).

Reasons for board to proceed with proposed improvement

Previous law: Under R.C. 940.25, five criteria are required for the board to approve the petition:

1. Is reasonably certain that the cost of the proposed improvement will be less than the benefits from it;
2. Finds that the improvement is necessary;
3. Finds that the improvement will be conducive to the public welfare;
4. Finds that 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. Finds that the improvement will aid lands in the area by promoting the economical, industrial, environmental, or social development of the area.

HB 340: Similar, but no longer requires the board to consider factors 4 and 5 (R.C. 940.23 (D)).

Establishment of date for completion of plans and specifications

Previous law: Following petition approval, requires the board to establish a date by which the board must complete plans, specifications and estimates of damages and costs.

HB 340: Removes this provision.

D. PLANS FOR CONSTRUCTING PROPOSED IMPROVEMENT

Maps of proposed improvement area

Previous law: Requires the board of supervisors to prepare maps showing location of land to be assessed by the board of commissioners.

HB 340: Removes the provision.

Plans - erosion and sediment control

Previous law: Requires construction plans for ditches to contain erosion and sediment control by a sod or seeded strip, except where suitable vegetative cover exists.

HB 340: Same, but also allows other erosion and sediment controls if suitable vegetative cover is not present (R.C. 940.24(C)(2)).

Plans - erosion and sediment control – strip width

Previous law: Requires sod or seeded strip to be between 4 and 15 feet wide.

HB 340: Strips to be between 10 and 15 feet wide (R.C. 940.24(C)(2)).

Erosion and sediment control - taxation

Previous law: Requires sod or seeded strips in excess of four feet to be removed from the taxable valuation of property.

HB 340: Requires the county auditor to remove the total acreage of sod or seeded strips or other such controls from taxable valuation of property (R.C. 940.24(C)(2)).

Removal or adjustment of structures in construction

Previous law: Requires the board of supervisors or designee to note all structures that will be removed or adjusted during construction of the improvement.

HB 340: Instead, requires the board or its designee to include in the plans an analysis of all structures to be removed or adjusted (*R.C. 940.24(D)*).

E. SCHEDULE OF ESTIMATE OF DAMAGES, CONSTRUCTION, AND ASSESSMENTS

Schedule of damages

Previous law: Requires the board of supervisors or its designee to prepare a schedule of damages.

HB 340: Same, but requires only the board to prepare the schedule of damages (*R.C. 940.25(A)*).

Total estimate of construction costs

Previous law: Requires the board of supervisors or its designee to make an estimate of the total cost of the proposed improvement, including construction costs, estimated costs of damages to owners, and any expenses incurred in the investigations and notifications related to the proposed improvement.

HB 340: Same, but includes expenses incurred in consulting services (*R.C. 940.26(C)*).

Schedule of estimated assessments

Previous law: Requires a board of commissioners or its designee to prepare a schedule of estimated assessments on property in the area benefited by the improvement.

HB 340: Requires the board of supervisors or its designee to prepare the schedule of assessments (*R.C. 940.27(A)*).

Schedule of estimated assessments

Previous law: For purposes of obtaining property descriptions that must be included with a schedule of assessments, requires the board of commissioners to obtain these descriptions from the county's tax duplicates.

HB 340: Requires the board of supervisors to obtain these descriptions from the county recorder's office (*R.C. 940.27(A)*).

Schedule of estimated assessments

Previous law: Requires the board of commissioners or its designee, in determining estimated assessments, to use information submitted to the board of supervisors (plans for the proposed improvement, including surveys, maps and specifications, together with schedules of damages, cost estimates, and any related reports that the supervisors or their designee prepared).

HB 340: Similar, but also requires the board of supervisors or its designee to consider and incorporate when applicable, the following factors when determining estimated assessments:

1. Acreage of the parcel;
2. Volume of water produced by the parcel;
3. Distance of the parcel from the proposed improvement;
4. Percentage of the proposed improvement to be used by the parcel;

5. The construction of works that are determined to solely benefit the particular parcel;
6. Soil types of the parcel;
7. The county auditor's land value or CAUV value, if applicable, of the parcel;
8. Existing drainage infrastructure that can be incorporated into the proposed improvement and associated cost savings;
9. Any other factors pertinent to the proposed improvement and the watershed that will be affected by the proposed improvement; and
10. Any benefits as defined in the law governing single county ditches (*R.C. 940.27(B)(2)*).

F. HEARING OF BOARD OF COUNTY COMMISSIONERS

Approval by a board of commissioners

Previous law: Requires the board of county commissioners to approve or disapprove the proposed drainage improvement received from the board of supervisors within 60 days of receipt.

HB 340: Similar, but removes the 60-day deadline for approval or disapproval and requires a hearing and to establish the date, time and location of the hearing (*R.C. 940.31(A)*).

Notice of commissioner hearing

Previous law: No provision.

HB 340: Requires the notice of the commissioner hearing to be sent by the clerk of the board at least 21 days before the hearing and to do both of the following:

1. Send a written notice of the hearing by certified mail to all owners that are adjacent to the proposed improvement;
2. Send the notice by certified or first-class mail to all other owners within the area to be benefited by the proposed improvement, the board of supervisors of the appropriate soil and water conservation district, and the county engineer (*R.C. 940.29(B)*).

Notice of commissioner hearing – notice contents

Previous law: No provision.

HB 340: Requires that the hearing notice contain all of the following:

1. The date, time, and location of the hearing;
2. A description of any easement on the owner's property that is necessary for purposes of the improvement;
3. An owner's estimated assessment;
4. A statement that an owner may file comments on the proposed improvement and exceptions to the estimated assessment in writing before the hearing or in person at the hearing; and

5. The address at which to submit written comments on the proposed improvement and exceptions to the estimated assessment (*R.C. 940.29(B)*).

Required elements of hearing

Previous law: No provision.

HB 340: Requires the board of commissioner at the scheduled hearing to do both of the following:

1. Present 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 owner regarding the estimated assessments and proposed improvement (*R.C. 940.30(A)*).

Elements of hearing - continuation

Previous law: No provision.

HB 340: Authorizes the board of commissioners to adjourn and continue the hearing on subsequent days for the following reasons:

1. Consider additional information about the proposed improvement;
2. Make changes that will better accomplish the purpose and object of the proposed improvement; or
3. Allow all interested owner to have an opportunity to comment on the proposed improvement (*R.C. 940.30(B)*).

Board of county commissioners - vote

Previous law: Establishes several factors for the board of commissioners to consider in approving or disapproving a drainage improvement, which include the following:

1. The cost of location and construction;
2. The compensation for land or other property that must be taken;
3. The benefits to the public welfare;
4. The benefits to land, public corporations, and the state needing the improvement;
5. 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; and
6. Any other proper matter that will assist the board in approving or disapproving construction of the improvement.

HB 340: Modifies the factors slightly. Under HB 340, the board of commissioners is authorized to 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; and
5. The proposed improvement will aid lands in the area by promoting the economic, environmental, or social development of the area (*R.C. 940.31(B)*).

Duties of the county engineer

Previous law: Requires the county engineer, if the board approves construction of an improvement, to file with the county recorder both of the following:

1. A property plat showing the general location of the improvement; and
2. A statement describing the dimensions of any permanent easement that is necessary for maintenance of the improvement.

HB 340: Instead, if the board of commissioners approves a petition, the county engineer is required to file with the county recorder all of the following:

1. A property plat showing the owners of record and parcel numbers along the improvement;
2. The location of the improvement;
3. The width of any permanent easement that is necessary for maintenance of the improvement; and
4. An affidavit listing the owners of record, complete property descriptions, and parcel numbers subject to the permanent easement. (The engineer must note the property plat in the affidavit.)

Additionally, HB 340 requires the county engineer to include the permanent easement in the county's geographic information systems or other mapping system, if available (*R.C. 940.31(D)*).

Board of supervisors – revision after disapproval

Previous law: No provision.

HB 340: Allows a board of supervisors to revise and submit a revised petition to the board of commissioners following the disapproval of a petition (*R.C. 940.31(F)*).

G. LEVYING OF ASSESSMENTS

Levying of assessments – adoption of resolution

Previous law: Authorizes the board of county commissioners, after receipt of an approved proposed improvement with supporting documentation from the board of supervisors of a soil and water conservation district, to adopt a resolution levying on the property within the area to be benefited by an improvement an assessment at a uniform or varied rate.

HB 340: Requires the board of commissioners to levy assessments if the board approves a petition (*R.C. 940.32(A)*).

HB 340 also requires the board of commissioners, in adopting a resolution, to take into consideration the estimated assessments prepared by the board of supervisors (*R.C. 940.32(A)*).

Assessments – consideration

Previous law: Requires the board of commissioners to direct the individual/authority preparing assessments to give:

1. 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
2. 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.

HB 340: Removes this requirement.

Assessments – public entity roadways

Previous law: Requires the part of the assessment that is found to benefit state, county, or township roads or highways or municipal streets to be assessed against the state, county, township, or municipal corporation, respectively, payable from motor vehicle revenues.

HB 340: Removes this provision, which provides public entities greater flexibility in paying the assessments.

Assessments – public entities

Previous law: Requires 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 to be assessed against the public corporation, the political subdivision, or the state and payable out of the general funds or motor vehicle revenues of the corporation, political subdivision, or state, except as otherwise provided by law.

HB 340: Similar to previous provision, this requirement is removed, thus providing greater flexibility in the paying of these assessments.

Assessments – exemptions

Previous law: States that any land owned and managed by the Department of Natural Resources for certain purposes is exempt from assessments if the Director of Natural Resources determines that the land derives no benefit from the improvement.

HB 340: Removes the provision.

Filing of objections - notice

Previous law: After an owner files an objection to an assessment, requires the board to proceed, within 30 days of the filing of an objection, 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.

HB 340: Retains this requirement, but requires the commissioners' clerk to notify, at least 14 days prior to the hearing date, each owner who filed an exception of the date and time of the owner's exception hearing. Hearings may be combined if multiple owners file (*R.C. 940.32(D)*).

HB 340 no longer requires commissioner to give notice via newspaper of general circulation if any mailed notice is returned undelivered.

Final schedule of assessments – notice

Previous law: No provision.

HB 340: Creates a new requirement that if a board of commissioners amends the final schedule of estimated assessments after hearing exceptions, the clerk of the board is required to 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 within 21 days of the notice of final estimated assessment (*R.C. 940.32(D)(1) and (2)*).

Lead County

Previous law: No provision.

HB 340: Establishes a new term of "lead county." A lead county, for purposes of the law governing joint boards of soil and water conservation districts and joint boards of county commissioners, is 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 (*R.C. 940.01(O)*).

H. JOINT BOARD OF SUPERVISORS

Formation of joint board of supervisors

Previous law: Authorizes a joint board of supervisors to be formed, with approval from the Ohio Soil and Water Conservation Commission, for projects spanning multiple districts.

HB 340: Requires that a joint board be formed for a multi-district project with approval from the Soil and Water Conservation Commission (*R.C. 940.34(A)*).

Joint board of supervisors – board numbers

Previous law: If a joint board membership would constitute an even number, an additional supervisor from the county in which the highest amount of taxes or assessments would be paid for the improvement.

HB 340: Modifies the statute to appoint the additional supervisor from the lead county (*R.C. 940.34(A)*).

Duties and responsibilities of joint board of supervisors

Previous law: Authorizes a joint board of supervisors to exercise the same powers provided to a single soil and water conservation district board.

HB 340: Retains those abilities and adds the additional following conditions:

1. For the purpose of making a preliminary determination to accept or reject a petition, the joint board must make the determination within 60 days of the approval of the creation of the joint board;
2. For the purposes of a petition, requires the joint board to do both of the following:
 - a. Send the petition and the accompanying information to the board of county commissioners of the lead county;
 - b. Send notification of the need for the creation of a joint board of county commissioners to the board of county commissioners of each county in the area to be benefited by the proposed improvement (*R.C. 940.34(B)*).

Administrative officers of the joint board of supervisors

Previous law: Requires the joint board of supervisors to designate the clerk of courts of one of the participating counties to serve as clerk of the board; and required the county auditor and treasurer of one of the participating counties on the joint board of county commissioners to become ex officio fiscal agents of all the participating counties.

HB 340: Requires the elected county officials (engineer, recorder, auditor, prosecutor, treasurer, judges) and commissioners' clerk of the lead county to serve as the administrative officers for the joint board of supervisors (*R.C. 940.34(C)*).

HB 340 also stipulates that the prosecuting attorney of a lead county that is represented by a joint board of supervisors to serve as the legal advisor of the board in all civil actions brought by or against the joint board.

HB 340 requires the prosecuting attorney to conduct all such actions in the prosecuting attorney's official capacity and authorizes the joint board to employ other attorneys as may be necessary or desirable in the operations of the joint board (*R.C. 940.12(B)*).

I. JOINT BOARD OF COUNTY COMMISSIONERS

Formation of joint board of commissioners

Previous law: States that the boards of commissioners of all counties containing territory included in the project area, if all of those boards have approved construction of an improvement, are a joint board of commissioners.

HB 340: Modifies the statute to specify that if a proposed improvement would affect more than one county, the boards of commissioners from each affected county are required to meet in the lead county on a date fixed by the commissioners' clerk of the lead county (*R.C. 940.35(A)*).

Apportionment of costs

Previous law: Authorizes the joint board of county commissioners to agree to apportion any cost of the improvement, or expenses incurred in connection with the improvement, not paid by assessments or taxes levied for the improvement, or funds other than county funds, among the participating counties.

HB 340: Removes this provision.

Responsibilities of the clerk

Previous law: No provision.

HB 340: Adds the following responsibilities to the clerk of the lead county:

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 a final record of the improvement of the lead county;
4. Provide copies of all proceedings to the clerks of the boards of all affected counties (*R.C. 940.35(C)*).

Director of Nature Resources membership

Previous law: No provision.

HB 340: Requires the Director of Natural Resources to serve as an ex officio member of the joint board and authorizes the Director to participate, in person or through a designated representative, in deliberations and proceedings of the joint board. HB 340 establishes the following regarding the Director's participation on the joint board:

1. The Director has no vote on any proceedings of the joint board except in the case of a tie;
2. If the Director or the Director's designee is not present at the proceeding, the Director must review the proceedings and cast the deciding vote within 30 days of the proceedings.
3. The clerk must record the final resolution of the tie (*R.C. 940.34(E)*).

J. APPEALS

Appeals

Previous law: Allows an owner to appeal the amount of an assessment to the court of common pleas.

HB 340: Allows any affected owner to 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 (*R.C. 940.38*).

Appeals basis

Previous law: No provision.

HB 340: Requires the affected owner to make the appeal within 30 days of the date of the action of determination. The appeal is to be based on any of the following questions:

1. Is the improvement necessary?
2. Will the improvement be conducive to the public welfare?
3. Is the cost of the improvement greater than the benefits conferred?

4. Is the route, termini, or mode of construction the best to accomplish the purpose of the improvement?
5. Are the assessments levied according to benefits?
6. Is the award for compensation or damages just? (*R.C. 940.38*)

K. VIDEO CONFERENCES AND TELECONFERENCES

Video conferences and teleconferences

Previous law: No provision.

HB 340: Allows a board of supervisors or joint board of supervisors, when practicable, to conduct meetings by videoconference or, if video conference is not available, by teleconference. The board or joint board is required to make provisions for public attendance at any location involved in a meeting conducted by video or teleconference. The board or joint board's main office or board room is the primary meeting location for the video conference or teleconference, and the meeting is subject to the Public Meetings Law.

Before a meeting is convened, HB 340 requires the designated staff to send a copy of meeting-related documents to each board or joint board member. The minutes of each meeting are required to specify who was in attendance and in what manner the meeting was conducted – teleconference, video conference, or in-person. Any vote taken in a meeting held by teleconference that is not unanimous is required to be recorded as a roll call vote.

HB 340 states that nothing in the Public Meetings Law prohibits a board or joint board from conducting a meeting in a manner as authorized above (*R.C. 940.39*).

II. SINGLE COUNTY DRAINAGE IMPROVEMENTS

Current law establishes a process by which a county may approve the construction of a drainage improvement when a petition is made to the board of county commissioners. The process generally follows the following steps:

1. Accepting petitions filed by landowners for a proposed drainage improvement;
2. Ensuring proper recordkeeping regarding the proposed improvement;
3. Providing proper notice and viewing of the proposed improvement;
4. Holding hearings regarding the proposed improvement;
5. Voting on whether to approve the petition;
6. Ordering assessments to pay for the improvement; and
7. The hearing of appeals regarding the process in the court of common pleas.

HB 340 retains the basic legal structure for approving and implementing a drainage improvement but makes numerous changes to the procedures and requirements that underlie the structure.

A. FILING AND AMENDING A PETITION

Filing of petition with board of county commissioners

Previous law: Authorizes an owner to file a petition with the clerk of the board of county commissioners requesting the construction of an improvement.

HB 340: Maintains this ability but now requires the owner, prior to filing a petition, to consult with the county engineer to discuss the proposed improvement and determine the proper forms and procedures (*R.C. 6131.04(A)*).

Petition – information included

Previous law: Requires a petition to include, in part, 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.

HB 340: Generally retains current law requirements for the petition to include the following information while clarifying that the future benefits or damages from the proposed improvements are determined by the county engineer:

1. A statement on the nature of the work for which the petition is filed;
2. A description, including location, of the course and termini of the proposed improvement;
3. A statement that the construction of the improvement is necessary and will benefit the petitioner;
4. A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land; and

5. A list of names and addresses of owners of land that the petitioner or county engineer claims will be benefited or damaged by construction of the improvement, as determined by the county engineer (6131.04(B)).

Bonding requirements

Previous law: Requires a petitioner to file a bond of \$500 plus an additional \$2 for each parcel of land in excess of 200 benefited parcels.

HB 340: Increases the bond requirement to \$1,500 plus an additional \$5 for each parcel of land in excess of 200 benefited parcels (*R.C. 6131.06(A)*).

Bond purpose

Previous law: Specifies that the bond is credited to the General Drainage Improvement Fund to pay the cost of notices, plus any other incidental expenses, excluding the costs incurred by the county engineer in making the engineer's preliminary reports if the petition is not granted or if the petition is dismissed.

HB 340: Provides that the bond may also be credited to a special fund created for the proposed improvement and specifies that the money must be used to pay for all costs associated in preparing for the view and first hearing if the petition is not granted or if the petition is dismissed (*R.C. 6131.06(B)*).

Bond release date

Previous law: The clerk of the board of commissioners shall release the bond after the expiration of the 21-day appeal period after an order of the commissioners at the first hearing or at the termination of the appeal.

HB 340: Bond release timeline is extended from 21 to 30 days (*R.C. 6131.05(C)*).

County land/roadway benefited – bond requirement

Previous law: Specifies that if the board of county commissioners, by resolution entered on its journal, finds that any land owned by the county or any highway under its supervision is in need of drainage and the drainage will also specially benefit other land, the board does not need to post bond for the improvement in the court of common pleas.

HB 340: Repeals this provision.

Amending a petition

Previous law: Allows a benefiting owner to file a written application for an amendment to a petition, provided the board allows the amendment application.

HB 340: Stipulates that a benefiting owner may file an amendment to a petition only with regard to expanding the length of the proposed improvement, provided that the amendment does not expand the area to be benefited by the proposed improvement (*R.C. 6131.05(A)*).

HB 340 specifies that if a benefiting owners seeks to expand the area to be benefited or the number of parcels to be benefited, the owner must file a new petition (*R.C. 6131.05(A)*).

HB 340 removes the ability of a benefiting owner to amend a petition while the proceedings are pending on appeal in the court of common pleas.

Comments to petition

Previous law: Allows an owner who has not joined in a petition and who is in favor of the petition, to file an application with the board of commissions requesting the improvement be

granted. Similarly, an owner not in favor of the petition is authorized to file remonstrances against the granting of the improvement.

HB 340: Modifies this process by allowing owners to comment on the petition with the board. These comments may be made in person at the public hearings or filed in writing with the clerk of the board of commissioners (*R.C. 6131.08*).

Proposed improvement recordkeeping

Previous law: Requires the board of commissioners to maintain a permanent file containing records of the petition that contained the following:

1. Applications and remonstrances filed;
2. Orders made by the board;
3. Preliminary estimates and preliminary report of the county engineer;
4. Reports of review by the Director of Natural Resources, the Director of Transportation, and the directors of any conservancy district;
5. Reports of the engineer as to the construction of the improvement; and
6. Any other matter that is proper for the record

HB 340: Instead, requires the clerk of the board to maintain a file for the proposed improvement which includes all of the following:

1. Amendments;
2. Comments;
3. Notices;
4. Proceedings;
5. Resolutions;
6. Orders; and
7. Any other record regarding the proposed improvement that is filed with the board (*R.C. 6131.061(A)*).

County engineer recordkeeping

Previous law: Requires the county engineer to maintain a similar permanent file for the proposed improvement containing key records.

HB 340: Makes adjustments to the required records and now requires all the following records be retained by the engineer:

1. A record of the petition;
2. Amendments to the petition;

3. 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
4. Any reports of the Director of Natural Resources, the Director of Transportation, and directors of conservancy districts (*R.C. 6131.061(B)*).

County engineer – preliminary report

Previous law: Requires the county engineer to prepare a preliminary estimate of the cost of the proposed improvement and file that estimate at the first hearing on the improvement, as a guide to the board of commissioners and the petitions.

HB 340: Modifies this requirement to require the county engineer to prepare the preliminary report on the proposed improvement on receipt of notice of the filing of the improvement from the board (*R.C. 6131.09(A)*).

Record transfers

Previous law: Requires the clerk of the board of commissioners, after the final hearing on the petition, or ruling on appeal, to file with the county engineer all maps, profiles, and plans of the improvement, which is to be filed together with an annual record of maintenance and repair.

HB 340: Modifies this requirement to require the commissioners' clerk to instead file or transfer the required records to the county engineer, which the county engineer must maintain as a permanent file, together with an annual record of maintenance and repairs for the improvement (*R.C. 6131.061(C)*).

B. NOTICE AND VIEW OF THE PROPOSED IMPROVEMENT

Establishing view date

Previous law: Requires the view of the proposed improvement to take place between 25-90 days after the date on which the petition was filed.

HB 340: Instead, requires the view to take place between 30 and 120 days after the petition's filing (*R.C. 6131.07(B)(1)*).

Notice of improvement

Previous law: Requires the commissioners' clerk to send a written legal notice to owners named in the petition at least 20 days prior to the view.

HB 340: Requires the commissioners' clerk to send the notice 21 days prior to the view (*R.C. 6131.07(C)*).

Notice of improvement – contents

Previous law: Requires the commissioners' clerk to include the following in the notice:

1. The pendency, substance, and prayer of the petition;
2. A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land; and
3. The date, time and location for the view and first hearing.

HB 340: Similar, but eliminates the requirement to include the pendency, substance, and prayer of the petition and also requires the clerk to include the following in the notice:

1. 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 access additional information or ask questions about the proposed improvement;
2. A statement that the owner may file, not more than 21 days after the view date, an amendment to the petition that expands the length of the proposed improvement, provided that the amendment does not expand the area to be benefited by the improvement;
3. 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; and
4. The address at which to file an amendment to the petition or submit written comments on the proposed amendment or the petition (*R.C. 6131.07(C)(2)-(6)*).

Notice of improvement - mailing

Previous law: Requires the commissioners' clerk to send notice by first class mail or certified mail, return receipt request to all owners.

HB 340: Instead, requires the clerk to send notice by certified mail to all owners that are adjacent to the proposed improvement, and to all other owners by first class or certified mail (*R.C. 6137.07(D)*).

The view

Previous law: On the date of the view, requires the board of commissioners and county engineer to do both of the following:

1. Meet at the designated place near the proposed improvement; and
2. Go over and along the line of the proposed improvement and each branch, lateral, or spur mentioned in the petition.

HB 340: Instead, on the date of the view, require the county engineer or a designed representative to do both of the following:

1. Present an overview of the proposed improvement; and
2. In that presentation, 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 (*R.C. 6131.10(A)*).

The view – reconvening

Previous law: Authorizes the county engineer to adjourn the view from day to day, or a longer period, until the view is complete.

HB 340: Specifies that when a request is made by a commissioner or an owner in the area to be benefited by the proposed improvement, the board of commissioners must 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 (*R.C. 6131.10(B)*).

C. FIRST HEARING ON PROPOSED IMPROVEMENT

Establishment of hearing of proposed improvement

Previous Law: Requires the board of commissioner to hold the first hearing on the proposed improvement between 10 and 90 days after the date of the view.

HB 340: Instead, requires the first hearing to occur between 30 and 90 days after the view (*R.C. 6131.07(B)(2)*).

First hearing

Previous law: At the first hearing, requires the board of county commissioners to:

1. Hear the preliminary report;
2. Hear evidence for or against the granting of the improvement, or for or against laterals, branches, spurs, or change of route, course, termini, or manner of construction; and
3. Adjourn the hearing from day to day, or for a longer time so all interested owners may be heard.

HB 340: Maintains the previous requirements for the hearing, but also allows the board to consider additional information (*R.C. 6131.101(B)*).

First hearing – vote

Previous Law: Authorizes the board of commissioners to approve the petition if the board finds all of the following:

1. That a proposed improvement is necessary;
2. That the proposed improvement is conducive to the public welfare; and
3. That it is reasonably certain that the cost will be less than the benefits.

HB 340: Generally, retains the same requirements, but also requires the board to take into consideration the petition, the preliminary report, and comments on the proposed improvement (*R.C. 6131.101(C) and 6131.12(A)*).

First hearing – improvement route

Previous Law: In granting the petition, requires the board to ensure that the route of the improvement be located so as to avoid running the improvement diagonally across property and, where practicable, follow property lines, section lines, and lines of public highways.

HB 340: Instead, requires the county engineer, as part of the survey and design of the improvement, to prepare specifications for the improvement's route that avoids running the improvement diagonally across property and to follow property lines, section lines, and lines of public highways (*R.C. 6131.14(E)(1)*).

D. COUNTY ENGINEER'S DUTIES PRIOR TO THE FINAL HEARING

County engineer's duties – general

Previous law: Requires the county engineer, when preparing for the improvement, to do the following:

1. Make the necessary surveys;
2. Prepare plans for structures;
3. Create maps showing the location of the land proposed to be assessed;
4. Make profiles showing the cuttings and gradient; and
5. Prepare an estimate of the cost of the improvement.

HB 340: Generally retains these requirements, but requires the county engineer to prepare construction drawings of the improvement and removes the requirement to make profiles showing the cuttings and gradient (*R.C. 6131.14(B)(4)*).

Engineer's duties – maintenance district

Previous law: Requires the engineer to recommend the maintenance district in which the improvement is to be placed.

HB 340: Instead, authorizes the engineer to recommend the maintenance district, if applicable (*R.C. 6131.14(B)(5)*).

Engineer's duties – schedule of damages

Previous law: No provision.

HB 340: Requires the engineer to prepare a schedule of damages, not in current law, that includes 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, and a description of that land or other property; and
2. 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 (*R.C. 6131.14(B)(6)*).

Engineer's duties – easement width

Previous law: Requires the engineer to specify a width of temporary easement for construction purposes that include spreading and leveling of spoil banks.

HB 340: Same, but adds that the temporary easement cannot be more than 75 feet from the top of the bank (*R.C. 6131.14(E)(2)*).

Engineer's duties – construction markings

Previous law: Requires the county engineer to do all of the following:

1. Set proper construction stakes and 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;

2. Take and note any necessary levels off the line of the improvement to determine the area of the land subject to drainage; and
3. 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.

HB 340: Removes these specific provisions, but retains language that requires the engineer to make a plan of the work to be done that shows 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 U.S. Geological Survey data above or below the base elevation used, and any other data that the engineer believes will aid in retracing lines, levels, or other features of the improvement (R.C. 6131.13(C)).

Engineer's duties – sod or seeded strip width

Previous law: Requires the engineer to prepare specifications for the construction of the improvement that provides for erosion and sediment control through the establishment of a sod or seeded strip between four and 15 feet wide.

HB 340: Same, but requires the sod or seeded strip width to be between ten and 15 feet wide (R.C. 6131.14(E)(3)).

Engineer's duties – excavation costs

Previous law: Requires the engineer to make estimates of the cost of excavating and of the cost of material and authorizes the engineer to divide the construction of the improvement into construction areas as considered expedient.

HB 340: Removes this requirement.

Engineer's duties – filing requirements

Previous law: Requires the county engineer, if the board agrees with the project survey and design on a proposed improvement, to file with the county recorder both of the following:

1. A property plat showing the general location of the improvement; and
2. A statement describing the width of the permanent easement that is necessary for maintenance of the improvement.

HB 340: Instead, requires the county engineer, if the board agrees with the project survey and design on a proposed improvement, to file with the county recorder all of the following:

1. A property plat showing the owners of record and parcel numbers along the improvement;
2. The location of the improvement;
3. A statement of the width of the permanent easement that is necessary for maintenance of the improvement; and
4. An affidavit listing the owners of record, complete property descriptions, and parcel numbers subject to the permanent easement. (The engineer must note the property plat in the affidavit.) (R.C. 6131.14(J)).

Engineer's duties - GIS

Previous law: No provision.

HB 340: Requires the county engineer to include the permanent easement in the county's GIS system or other mapping system, if available (*R.C. 6131.14(J)*).

Engineer's duties - assessments

Previous law: Requires the county engineer to prepare a schedule of assessments and when determining the estimated drainage assessments for a parcel, give primary consideration to the potential increase in productivity that the parcel may experience as a result of the improvement and 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 of the improvement.

HB 340: Requires the county engineer to prepare a schedule of assessments, but, when calculating each estimated assessment, instead requires the engineer to use the information compiled in the engineer's estimate of the cost of the improvement and the schedule of damages and to consider the following factors:

1. Acreage of a parcel;
2. Volume of water produced by a parcel;
3. Remoteness of the parcel to the improvement;
4. Percentage of the improvement used by the parcel;
5. Work determined to benefit that particular parcel only and not the remainder of the parcels in the watershed;
6. Soils;
7. County auditor's land value or current agricultural use value;
8. Existing drainage infrastructure that can be incorporated into the improvement and associated cost savings;
9. Any other factors pertinent to that particular petition and watershed; and
10. Any benefits of the improvement (*R.C. 6131.15(B)*).

Engineer's duties – property owners and descriptions

Previous law: Requires the county engineer to do both of the following:

1. Include with the schedule of assessments, the name and address of each owner and a description of the land believed to benefit from the proposed improvement; and
2. Obtain the name and description from county's tax duplicates.

HB 340: Similar, but does all of the following:

1. Requires the county engineer to obtain the owner's address from the county's tax duplicates;
2. Requires the engineer to obtain the description from the county recorder's office; and
3. For purposes of the description, prohibits the county recorder from requiring a metes and bounds survey (*R.C. 6131.15(A)*).

E. FINAL HEARING

Notice of final hearing

Previous law: Requires the clerk of the board of county commissioners to immediately give notice, by certified mail, return receipt requested, or by first class mail to all owners whose names appear in the county engineer's schedules of assessments and damages.

HB 340: Generally the same, but requires the clerk to provide notice, at least 21 days prior to the final hearing, by certified mail to all owners who are adjacent to the proposed improvement, and by certified or first class mail, to all others in the area to be benefited (*R.C. 6131.16(B)*).

Filing damages prior to hearing

Previous law: Allows an owner to file an exception to the county engineer's schedule of assessments or a claim for damages or compensation on or before the date of the final hearing in the proceedings to construct the improvement.

HB 340: Generally the same, but requires the owner to file the exception not less than five days before the final hearing (*R.C. 6131.17*).

Compensation and damages – value

Previous law: Specifies that when the board of commissioners determines damages at the final hearing, the board should also determine the fair value of any land or any other property to be taken for the proposed improvement.

HB 340: Same, but requires the board to determine the value (not fair value) of land or other property taken for the proposed improvement (*R.C. 6131.19(B)*).

Compensation and damages - notification

Previous law: Requires the board of county commissioners, when determining the amount of damages that an owner is entitled, to enter its findings in its journal and authorize the county auditor to issue warrants upon the county treasurer to claimants for the appropriate amounts before any work on the proposed improvement is done.

HB 340: Instead, specifies that if the board awards additional compensation to any owner at the final hearing, the board must order the county engineer to prepare new assessments for the proposed improvement and the clerk of the board must notify all owners of the new assessments (*R.C. 6131.19(C)*).

Compensation and damages – legal representation

Previous law: Specifies the following in regards to claims for compensation or damages:

1. In all matters where the rights of the county are affected, the prosecuting attorney represents the county; and
2. In all matters where the rights of the state of Ohio are affected, the Attorney General represents the state.

HB 340: Repeals these provisions, as existing Ohio law dictates that the prosecuting attorney represent the county and the Attorney General represent the state in these types of claims (*R.C. 109.361 and 309.09*).

Ordering assessments

Previous law: Specifies that once the board of county commissioners determines the assessment amount for a proposed improvement, the board must order the county engineer to receive bids – the county engineer must receive the bids within 25 days after receiving the order.

HB 340: Increases the time from 25 days to 30 days by which the county engineer must receive bids (*R.C. 6131.22(C)(1)*).

F. APPEALS PROCESS

Appealing board's order to court

Previous law: Specifies that an affected owner may appeal to the court of common pleas within 21 days of the date that any order was issued by the board of county commissioners regarding an improvement.

HB 340: Increases the time that an affected owner has to appeal the board's order to 30 days from the date that the order was issued (*R.C. 6131.25(A)*).

Bonding

Previous law: *R.C. 6131.26* establishes a list of requirements for a landowner to follow when appealing a drainage improvement hearing decision:

1. File an appeal bond of at least \$500, plus the sum of \$2 for each parcel of land in excess of 200 benefited parcels;
2. Pay all costs on appeal if the hearing decision is sustained;
3. File a statement of the decision or order appealed from and of the claims of the owner in ordinary and concise language; and
4. Pay all necessary filing fees and other related documents as the court may require.

HB 340: Repeals *R.C. 6131.26*.

Separate filings by multiple owners

Previous law: Authorizes several owners to appeal the orders in the same improvement and file separate bonds and separate statements stating the matters appealed.

HB 340: Same, but removes the requirement that the owners file separate bonds and separate statements stating the matters appealed (*R.C. 6131.28*).

Appeals Hearing

Previous law: Specifies that the appeals hearing is conducted in the same manner as are other civil hearings.

HB 340: Removes this specification. The appeals process will still be conducted in accordance with Ohio law and Ohio Rules of Civil Procedure.

Board of arbitrators

Previous law: Authorizes the court of common pleas to appoint a board of arbitrators to assume the duties of the judge in the appeals hearing.

HB 340: Removes this provision.

Jury Trial

Previous law: Includes specific procedures regarding a trial by jury.

HB 340: Removes the specific procedures; retains the right to a jury trial and Ohio Rules of Civil Procedure, as well as relevant provisions of Ohio law (*R.C. 6131.32 and 6131.33*).

G. CIVIL ACTION

Contractor failing to complete contract

Previous law: If a contractor is not performing or completing improvement work according to the contract, requires the board of county commissioners to give the contractor notice in writing of a hearing on the matter at least ten days before that hearing and, if after the hearing the contractor is found to have breached the contract, allows the county engineer to replace that contractor.

HB 340: Repeals these procedures; however, Ohio law still provides for remedies for breach of contract (*R.C. Chapters 1301 and 1302*).

Civil action to recover damages

Previous law: Allows an owner who has suffered any loss or damage by reason of the failure of a contractor to perform in accordance with the contract, or by the contractor's negligence in performing the contract, to bring suit against the contractor and the contractor's bondsmen to recover damages that are sustained.

HB 340: Removes this specific provision; however, Ohio law provides a process for bringing a civil action for an owner who suffers damages caused by a contractor.

Joinder

Previous law: Allows two or more owners who are assessed for the construction of the improvement to bring one civil suit against the contractor and the contractor's bondsmen to recover damages and for the jury to award damages in one verdict.

HB 340: Removes this specific provision; however, the Ohio Rules of Civil Procedure governs joinder of parties.

H. FUNDING AND COMPENSATION

General Drainage Improvement Fund

Previous law: Requires the board of county commissioners of each county to provide and establish the "General Drainage Improvement Fund" to be used as a sinking fund for all bonds issued for improvements.

HB 340: Authorizes, instead of requires, each county to have a General Drainage Improvement Fund. As a result, allows each county to establish other special funds to deposit money to be used for improvements and other costs (*R.C. 6131.50*) and makes conforming changes (*R.C. 6131.06, 6131.12, 6131.19, 6131.30, 6131.51, 6131.52, and 6131.60*).

Warrants

Previous law: Prohibits warrants from being drawn to be paid from the fund unless the fund contains a sufficient amount not otherwise specifically appropriated to pay them.

HB 340: Removes this provision.

Extra compensation for contractors

Previous law: Authorizes the board of county commissioners to order extra compensation for non-bid work to be done by a contractor, under the supervision of the county engineer, if one of the following occurs:

1. In the progress of the work on any improvement there occurs bed rock, flowing sand, or other items not noted in the engineer's report that must be removed or controlled; or
2. In the progress of the work non-bid material or labor, or both, is needed (*R.C. 6131.48*).

HB 340: Repeals the provision.

Extra compensation – pro rata reductions

Previous law: Allows for pro rata reductions if the costs are less than anticipated (*R.C. 6131.48*).

HB 340: Repeals the provision.

Installment payments to contractor

Previous law: Provides for installment payments to be paid to the contractor as work on the improvement progresses.

HB 340: Repeals this provision (however Ohio law – *R.C. 151.13, 153.12, and 153.14* – still allows for installment payments to contractors).

I. CONFLICTS OF INTEREST

Procedures in case of conflict

Previous law: Specifies that if one or more members of a board of county commissioners are petitioners for an improvement, the clerk of the board must notify the court of common pleas judge who then appoints disinterested owners of property in the county to take the place of the board members who are petitioners.

HB 340: Retains this provision, but removes the prohibition against appointees being related by blood or affinity to the interested members. Also removes the requirement that the appointees take an oath (*R.C. 6131.60*).

Appointees – per diem

Previous law: Requires the appointees to receive the same per diem rate that the disqualified member receives.

HB 340: Authorizes, instead of requires, the appointee to receive the same per diem rate that the disqualified member receives (*R.C. 6131.60*).

J. OWNER-FUNDED IMPROVEMENT

Exception to owner-funded improvement

Previous law: Allows one or more owners who are willing to construct and pay the costs of a drainage improvement to enter into a written agreement for the construction of the improvement, with the exception of an owner whose land is used for agricultural purposes who desires to install tile by extending or adding to the owner's own laterals or desires to expel water into an open ditch on the owner's land in the same watershed.

HB 340: Same, but removes the agricultural land owner exception (*R.C. 6131.63(A)*).

Professional engineer approval

Previous law: Requires the plan for an owner-funded drainage improvement to be approved by a professional engineer (*R.C. 6131.63*).

HB 340: Removes the provision.

County engineer's review

Previous law: Requires the county engineer to file with the clerk of the board of county commissioners, within 60 days, a report of the engineer's review with recommendations for change, amendment, or alteration of the agreement, plan, and schedules that the engineer determines are necessary in the public interest.

HB 340: Same, except requires the county engineer to submit all aspects of the review regardless of whether the engineer determines they are necessary in the public interest (*R.C. 6131.63(E)*).

III. JOINT COUNTY DRAINAGE IMPROVEMENTS

Existing law establishes a process by which multiple counties may construct a drainage improvement through a petition presented to a joint board of county commissioners. In general, the joint county process mirrors the process used by single county drainage projects. The joint board process includes the following steps:

1. Requiring the joint board to meet regarding the proposed drainage improvement;
2. Accepting petitions filed by landowners for a proposed improvement;
3. Ensuring proper recordkeeping regarding the proposed improvement;
4. Providing proper notice, and viewing the proposed improvement;
5. Holding hearings regarding the proposed improvement;
6. Voting on whether to approve the petition;
7. Ordering assessments to pay for the improvement;
8. Designating which county engineer will conduct the field work, make the survey, plans, and estimates and file required reports; and
9. The hearing of appeals regarding the process in the court of common pleas.

HB 340 retains the basic structure of the joint drainage improvement process. However, it makes numerous changes to the specifics of the process.

A. PROCEDURES AND REQUIREMENTS

Lead county

Previous law: Lacks a definition of “lead county,” but instead generally refers to the “county in which the petition is filed.”

HB 340: Defines a “lead county” to mean the county in which the majority of a joint county drainage improvement would be located, as specified in an original petition (*R.C. 6133.01(B)*).

Meeting requirement

Previous law: Requires the board of county commissioners from each of the counties affected by a joint county improvement to meet in the county in which the petition for the project was filed.

HB 340: Removes the requirement that the boards meet in the county in which the petition for the project was filed (*R.C. 6133.04(A)*).

Certified copies of petition

Previous law: Requires the clerk of the board of county commissioners in the county in which the petition was filed to act as clerk, and to file certified copies of all proceedings with the clerks of the boards of all the affected counties.

HB 340: Instead, requires the clerk of the lead county to act as clerk and administrator and requires the clerk to provide copies, not certified, of all the proceedings to the clerks of all affected counties (*R.C. 6133.04(B)*).

Hearing Location

Previous law: Requires that all hearings to be held in the county in which the petition for the improvement was filed.

HB 340: Instead, requires all such hearings to be held in the lead county unless a majority of the joint board agrees to an alternative location (*R.C. 6133.04(E)*).

Administration of the joint board

Previous law: No provision.

HB 340: Requires that when the joint board is formed, that it be administered by the lead county's elected officials, the lead county's county engineer, county recorder, county auditor, county prosecutor, common pleas judges, county treasurer, and clerk of the board of the county commissioners (*R.C. 6133.04(F)*).

Fiscal agents

Previous law: Requires the county auditor and the county treasurer of the county in which the petition is filed to be the fiscal agents of all the counties interested in the improvement.

HB 340: Instead, requires the county auditor and county treasurer of the lead county to be the fiscal agents (*R.C. 6133.07(A)(1)*).

Claims for compensation

Previous law: Requires all applications, remonstrances, claims for compensation or damages, reports, schedules, certificates, statements, contracts, bonds, and other papers to be filed with the clerk with whom the petition is filed.

HB 340: Instead, requires both of the following:

1. The clerk of the joint board to 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;
2. The fiscal agents to process and pay each bill for the joint board of county commissioners presented (*R.C. 6133.07(A)(2)* and (3)).

Certification of costs and collection of assessments

Previous law: Specifies the following certification and collection requirements regarding assessments:

1. The county auditor must certify a schedule of assessments to the other county auditors;
2. The county auditor and treasurer must receive and account for the funds in the same manner as single county improvements;
3. All warrants for the payment of costs and location for construction of a joint county ditch must be drawn by the county auditor of the county in which the petition was filed, on the treasurer of that county, payable from the general ditch improvement fund of that county.

HB 340: Instead, specifies the lead county auditor and lead county treasurer must perform the certification of costs and collection requirements (*R.C. 6133.07(B)* to (E)).

Certification of costs and collection of assessments – dismissal of petition

Previous law: If a petition for a joint county improvement was dismissed, requires the costs and expenses of the county engineer where a petition for an improvement is filed to be paid by the counties involved in the joint county improvement.

HB 340: Similar, but requires the costs and expenses of the lead county engineer to be paid by the counties involved in the joint county improvement (*R.C. 6133.07(F)*).

Selection of county engineer for joint drainage improvements

Previous law: Authorizes the joint board of county commissioners to designate the county engineer where a petition for an improvement is filed to do the field work, make the survey, plans, and estimates, and file reports.

HB 340: Instead, designates the lead county engineer as being responsible for such actions (*R.C. 6133.08(A)*).

Engineer discrepancies

Previous law: If one or more county engineers of counties interested in making a joint ditch improvement do not agree with the reports or estimates, authorizes the engineer or engineers to file separate reports and schedules (*R.C. 6133.08*).

HB 340: Removes this provision.

Appeals

Previous law: Requires all appeals except appeals for compensation or damages to be heard by one judge of the court of common pleas from each of the interested counties, sitting en banc.

HB 340: Similar, but does all of the following regarding appeals:

1. Requires all appeals (except those for compensation or damages) to be heard by a panel of judges from each of the affected counties;
2. Authorizes the panel to request an additional judge from a court of common pleas in the area of the state where the joint drainage improvement is located if the panel cannot reach a decision;
3. Requires the panel to follow court opinions and precedent established by the appellate district in which the petition for the joint drainage improvement was filed (*R.C. 6133.10(A)*).

IV. DRAINAGE MAINTENANCE AND REPAIRS

Existing law establishes procedures by which maintenance is conducted and assessments for maintenance are levied under county drainage law. HB 340 expands the scope of these procedures to apply to multi-county ditches and soil and water conservation districts and makes certain modernizations to the statute.

A. MAINTENANCE FUNDS

Maintenance fund

Previous law: Requires the board of county commissioners of each county to establish a separate fund for the repair of:

1. Each improvement constructed under the law governing single county ditches; and
2. Each improvement constructed after August 23, 1957, under the laws governing joint county ditches and interstate county ditches.

HB 340: Instead, requires the board of county commissioners of each county to establish a fund for the repair of each improvement constructed after August 23, 1957, under the law governing soil and water conservation districts, single county ditches, joint county ditches, or interstate county ditches (*R.C. 6137.02(A) and 6135.05(A)*).

Maintenance fund assessments

Previous law: Requires maintenance assessments levied on benefited owners to be based on the estimated benefits for construction of the drainage improvement.

HB 340: Instead, requires the assessments to be based on the estimated benefits for all costs of the improvement (*R.C. 6137.03(A)(1)*).

Maintenance fund – unencumbered balance

Previous law: Prohibits a maintenance fund from having an unencumbered balance of greater than 20% of all construction costs of a drainage improvement.

HB 340: Instead, prohibits a maintenance fund from having an unencumbered balance of greater than 20% of the permanent assessment base (*R.C. 6137.03(A)(2)*).

Permanent assessment base for maintenance

Previous law: Requires the county auditor to maintain the original schedule of benefits on owners (of public or private property for the construction of an improvement) as the “permanent base for maintenance assessments,” and establishes general procedures for increasing or reducing the assessment and notice and hearing requirements.

HB 340: Similar, but makes the following changes:

1. Refers to the term as the “permanent assessment base”;
2. Requires notice of hearings to be sent by first-class mail rather than either by first-class or certified mail;
3. Authorizes, rather than requires, the board of county commissioners to review the permanent assessment base every six years from the date of first review of the permanent assessment base (*R.C. 6137.11(C)(4) and (D)*).

Owner application for reduction in maintenance assessment

Previous law: Authorizes an owner to apply for a reduction in maintenance assessment due to repair and maintenance work the owner proposes to do and requires the county engineer, when making inspections of drainage improvements, to note the extent to which any owner has carried out the work.

HB 340: Similar, but only requires the county engineer, when making inspections of drainage improvements, to so note with regard to an owner who has actually applied for a reduction in maintenance assessment (*R.C. 6137.08(B)*).

Reduction in maintenance assessment

Previous law: Requires the clerk of the board of county commissioners to file with the county auditor a list of owners who have been certified by the soil and water conservation district for a 50% reduction in maintenance assessment for the current year on or before July 1 of each year.

HB 340: Instead, does both of the following:

1. Requires the clerk to file with the county auditor a list of owners who have been granted any reduction in maintenance assessment for the current year; and
2. Requires the clerk to file the list on or before August 1 of each year (*R.C. 6137.09(D)*).

Maintenance assessment deposit

Previous law: No provision.

HB 340: Establishes the following requirements concerning maintenance assessments:

1. With respect to a single county drainage improvement, requires the county auditor to place maintenance assessments into the maintenance fund for the improvement;
2. With respect to a joint county drainage improvement, does all of the following:
 - a. Requires each county auditor that is not the lead county auditor to place the maintenance assessments into the maintenance fund for the improvement;
 - b. Twice a year, requires each such auditor to transfer that money to the county auditor of the lead county, who must deposit the money into the joint drainage improvement's maintenance fund; and
 - c. Requires the county auditor of the lead county to place maintenance assessments received in the lead county into the joint drainage improvement's maintenance fund (*R.C. 6137.03(E)(1) and (2)*).

B. DRAINAGE INSPECTIONS

Responsibility for maintenance of joint county drainage improvements

Previous law: Requires each county engineer to inspect and maintain joint county drainage improvements.

HB 340: Instead, requires the lead county engineer to inspect and maintain all joint county drainage improvements (*R.C. 6137.06(A)*).

County engineer reports

Previous law: Requires the county engineer to issue an inspection report to the board of county commissioners on or before June 1 of each year.

HB 340: Instead, requires the report to be issued on or before July 1 of each year (*R.C. 6137.03(C)*).

Use of county engineer reports

Previous law: No provision.

HB 340: Requires the board of commissioners to do both of the following:

1. Use the county engineer's estimate on repair and maintenance of drainage improvements when determining the annual maintenance assessments, which must be based on a percentage of the permanent assessment base;
2. On or before the second Monday of September each year, direct the county auditor or auditors to place the maintenance assessments on the tax duplicate (*R.C. 6137.03(D)*).

Notification of violations of Water Pollution Control Law

Previous law: Requires a county engineer to notify the appropriate county board of health of potential violations of the Water Pollution Control Law regarding any drainage channel.

HB 340: Instead, requires the county engineer to notify the Director of Environmental Protection of those potential violations (*R.C. 6137.14*).

County drainage maintenance fund – payment of estimates for repair

Previous law: Requires the county engineer to approve all estimates paid from the county drainage maintenance fund for the repair and maintenance of drainage improvements (*R.C. 6137.06*).

HB 340: No provision.

Drainage maintenance district – same watershed

Previous law: Regarding the combining of drainage improvements into a drainage maintenance district, specifies that the improvements must be in the same watershed.

HB 340: Eliminates the requirement that the improvements be located in the same watershed (*R.C. 6137.04(A)(2)*).

Drainage maintenance district – factors to consider

Previous law: Regarding the combining of drainage improvements into a drainage maintenance district, requires the board of county commissioners and county engineer to consider uniformity of topography and soil types.

HB 340: Similar, but requires the board and engineer to also consider similarity of costs (*R.C. 6137.04(A)(1)*).

C. DRAINAGE MAINTENANCE PROCEDURES

Procedures for drainage improvement repair or maintenance – identification

Previous law: Specifies that any of the following may identify a need for repair or maintenance of a drainage improvement:

1. The board of county commissioners or joint board of county commissioners;

2. County engineer; or
3. A land owner subject to the maintenance assessment.

HB 340: Similar, but adds the lead county's county engineer (*R.C. 6137.05(B)*).

Procedures for drainage improvement repair or maintenance – inspection

Previous law: Requires the board of county commissioners or joint board of county commissioners or the county engineer to inspect the condition of the drainage improvement.

HB 340: Instead, only requires the county engineer to inspect (*R.C. 6137.05(B)*).

Procedures for drainage improvement repair or maintenance – estimate of costs

Previous law: Requires the board of county commissioners or joint board of county commissioners to make an estimate of the necessary work and material for the repair or maintenance activity.

HB 340: Instead, only requires the county engineer to make an estimate of the cost of the necessary work (*R.C. 6137.05(C)(1)*).

Procedures for drainage improvement repair or maintenance – performance of work

Previous law: Requires the board of county commissioners or joint board of county commissioners to determine whether the work should be done by force account, contract through competitive bidding, or both, to certify costs to the county auditor, and proceed with competitive bidding.

HB 340: Similar, but only requires the county engineer to determine whether the work should be done by force account, contract through competitive bidding, or both and streamlines the competitive bidding procedures by referring to the general county competitive bidding law (*R.C. 6137.05(C)(2)*).

Force account definition

Previous law: No provision.

HB 340: Defines “force account” as the county engineer will act as contractor, using labor employed by the engineer using material and equipment either owned by the county or leased or purchased in compliance with competitive bidding laws and excludes subcontracting any part of such work unless done pursuant to those laws (*R.C. 6137.01(B)*).

Procedures for drainage improvement repair or maintenance – contract with soil and water conservation district

Previous law: No provision.

HB 340: Authorizes the board of county commissioners or joint board of county commissioners and the county engineer to contract with a soil and water conservation district for the repair 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 (*R.C. 6137.05(D)*).

Repairs, repair assessments, and inadequate drainage repair funds

Previous law: Regarding repairs to a drainage improvement, does all of the following:

1. Authorizes a board of county commissioners to authorize a county engineer to make repairs at a cost not to exceed \$4,000;
2. Limits the number of semiannual installments that may be made to owners to pay for repairs to four;

3. Authorizes a board to make payment for a drainage improvement repair from the county general fund when the drainage repair fund is inadequate and requires the board to repay the county general fund as soon as adequate funds become available in the drainage maintenance fund.

HB 340: Generally, retains current law regarding repairs to a drainage improvement, but:

1. Increases the amount a board of county commissioners may authorize a county engineer to spend to make repairs to a cost not to exceed \$24,000;
2. Increases the limit on the number of semiannual installments to ten;
3. Eliminates the authorization to pay for repairs from the county general fund when the drainage repair fund for the improvement is inadequate (*R.C. 6137.051(C) and (E)*).

D. DRAINAGE EQUIPMENT AND MISCELLANEOUS

Rotary Fund

Previous law: Requires the county auditor to establish and maintain a rotary fund for the purchase of equipment, materials, and labor related to the general maintenance of watercourses.

HB 340: Instead, authorizes, rather than requires, the county auditor to establish and maintain a rotary fund for the purchase of equipment, materials, and labor related to the general maintenance of drainage improvements (*R.C. 6137.06(E)*).

Drainage equipment – inventory

Previous law: Requires the county engineer to annually, on June 1, make an inventory of drainage equipment.

HB 340: Instead, requires the county engineer to make the inventory on the second Monday of January (*R.C. 6137.07(C)*).

Open ditch log-jam removal projects

Previous law: No provision.

HB 340: Regarding an open ditch log-jam removal project within a wooded riparian corridor, authorizes a maintenance easement to be created from the top of a bank to 25 feet outside the edge of the wooded riparian corridor (*R.C. 6137.12(B)(2)*).

Crop owner payment for damages

Previous law: Requires the reimbursement of a crop owner for damage to crops located beyond the permanently established sod or seeded strip due to maintenance work on a drainage improvement, and requires the reimbursement to be equal to market value.

HB 340: Same, but clarifies that a crop owner must submit a written request for payment for damages to the county engineer (*R.C. 6137.12(E)*).