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# HANDBOOK

## Ohio County Commissioners

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## CHAPTER 28

### COUNTY SEWER DISTRICTS: THE PROVISION OF WATER, SEWER, DRAINAGE, AND STORM WATER PREVENTION AND REPLACEMENT FACILITIES

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April, 2015

#### STRUCTURE OF COUNTY SEWER DISTRICTS CHAPTER

The structure of the County Sewer Districts Chapter of the *Handbook* is divided into four parts as follows:

- Part 1--Introductory Material on Water, Sewer, Drainage, & Storm Water Prevention and Replacement Facility Improvements under ORC Chapters 6103 & 6117—see page 4.
- Part 2--Sewer Facilities—see page 17.
- Part 3--Water Facilities—see page 39.
- Part 4--Drainage and Storm Water Prevention & Replacement Facility Improvements—see page 56.

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## PART 1

### **INTRODUCTORY MATERIAL ON WATER, SEWER, DRAINAGE & STORM WATER PREVENTION AND REPLACEMENT FACILITY IMPROVEMENTS UNDER ORC CHAPTERS 6103 & 6117**

#### **28.01 GENERAL INTRODUCTION**

Prior to World War II the provision of water and sewer was largely a municipal function. With the return of the troops at the conclusion of the War and the emergence of the “baby boomer” generation suburban and rural development exploded. During the 1930’s and 1940’s new births averaged between 2.3 to 2.8 million per year. In 1946 nearly 3.5 million babies were born in the U.S. During the rest of the 1940’s and until 1965 this relatively high birth rate continued; in 1957 and 1961 alone, 4.3 million babies were born.

Water and sewer was needed to accommodate this population explosion and the corresponding new housing subdivisions and commercial and industrial development that accompanied the growth. What was different from pre-War development was the speed of the development and that post-War America wanted to be away from the older built up cities—they wanted to be “out”. Given the growth pressures brought on by the “baby boomers” it fell to county commissioners to respond to the need for water and sewer.

While some counties responded to the need, many did not support changing the rural character of the county. One result of this reluctance was increased annexation activity. In essence, what some residents, and even more developers, were saying was that if counties would not respond to the service needs they would find some other way. One of the preferred methods to receive water and sewer services was to annex property to a municipality that was more experienced in providing the needed facilities.

As the post-War boom continued, however, more and more counties realized that water and sewer systems were necessary, not only from a public health perspective, but also as an economic development tool. Later, with the enactment of federal water quality legislation even more counties, some unwillingly, began to provide water and sewer services. Orders from the Ohio EPA to provide water or to sewer areas because of general water quality or public health problems, sometimes resulting from failing private on-lot wastewater treatment systems, forced even the most reluctant county to develop water and sewer plans, determine projects costs, and enter the utility business.

Later, it was learned that storm water and other non-point sources of pollution were also a significant contributor to water quality problems. In response to additional federal laws and regulations relating to non-point sources, the inflow of storm water into sanitary sewers, and combined sewer overflows, counties became more actively engaged in

drainage, storm water, and prevention activities to address this new water quality challenge.

### **28.011 REASONS TO ESTABLISH COUNTY SEWER DISTRICTS**

While many counties are already actively engaged in the provision of water and sewer services through the establishment of county sewer districts under ORC Chapter 6117, becoming a provider of water and sewer services for those not already in “the business” is a significant undertaking. The establishment of a sewer district for serving the water and sewage disposal needs of the residents adds significant new responsibilities on the board of county commissioners.

And while the provision of water and sewer services has clear public health and environmental advantages and is popular with some residents, new water and sewer projects also can be disliked and controversial by other residents. Contemporary water quality and drinking water standards require a significant investment which, in the end, is paid by the rate payers or taxpayers whether it is in the form of special assessments on real estate, water and sewer user charges, tap-in fees, or county general revenue fund subsidies.

So it is useful to look at some of the reasons counties have taken on this responsibility in the past. The provision of drinking water is often provided because of problems with either local ground water quality or quantity. In areas with inadequate ground water resources residents often must construct cisterns and have water hauled in, both an inconvenient and expensive undertaking.

In the case of sewage disposal, counties are often asked to sewer areas where there are water quality problems resulting from leaking septic tanks and other on-lot treatment devices. Indeed, the County Sewer District Law allows residents to petition commissioners for the provision of both water and sewer services as will be explained later in Sections 28.38 and 28.67 of this Chapter.

In the case of sewage disposal, commissioners are often encouraged to establish sewer districts to serve residential subdivisions in the unincorporated areas of the county when on-lot treatments devices cannot be used because of soil conditions. In these cases, the developer builds a small treatment plant and wants the county to operate and maintain the treatment plant. Likewise, counties often are approached by companies wanting to locate business and industrial facilities in the unincorporated of the county for the provision of water or sewer service, or both. Counties also decide to become providers of service as a part of a larger economic development strategy. Clearly, water and sewer are needed primary utilities, along with gas and electric, that most companies are looking for when making locational decisions.

There are also those situations where a local health department or the Ohio EPA want the county to take over certain water supply or sewage disposal operations which are operated by other entities who are having management or financial problems. In other

circumstances counties that have decided not to establish a sewer district find that they are ordered by Ohio EPA to either provide a public water supply, or more frequently, public sewage collection and treatment facilities. Under ORC Sections 6103.17 and 6117.34, the Director of EPA may issue such “findings and orders” to boards of county commissioners. This will be discussed in great detail in Section 28.41 and 28.70 later in this Chapter. In many cases these situations are very controversial and are in locations in the county where residents have limited income and the cost of treatment and operation becomes a financial burden to those residents on limited and fixed incomes.

## **28.012 OTHER OPTIONS FOR THE PROVISION OF WATER AND SEWER SERVICES IN THE COUNTY**

In addition to providing water and sewer services through the establishment and management of a county sewer district under ORC Chapters 6103 and 6117, the following are other organizational options for the provision of services:

1. Municipal Provision of Services—Municipalities are major providers of water and sewer services in Ohio. Counties may contract with municipalities to provide services to those in the incorporated areas of the county by contract. While this may require the establishment of a county sewer district on paper, contractual provisions would provide that the municipality would have control over the service provision. One problem with this approach is that municipalities may be reluctant to provide services outside of the municipality until land is annexed. Another issue is municipal policies may establish rate surcharges for township residents which may substantially increase costs in comparison to municipal residents.
2. Regional Water & Sewer Districts—Regional Sewer Districts may be established under ORC Chapter 6119 to provide water, sewer and storm water services. In order to establish such a district a petition must be filed in Probate Court. For additional information refer to Section 28.04 of this Chapter. Also the Coalition of Regional Districts (CORD), which is an organization exclusively for such districts, can be contacted for additional information. Their web site is at: <http://cordohio.org/>.
3. Cooperative or Non-Profit Water and Sewer Organizations—Another option for the provision of services are Cooperative Districts which are usually non-profit corporations incorporated under ORC Chapter 1702. Each may be organized differently and are governed as provided for in the code of regulations for the non-profit corporation. A good source of information for these types of districts is the Ohio Rural Water Association, whose members also include public, regional districts, and private corporate water providers. For more information their web site can be found at: <http://ohioruralwater.org/>.
4. Investor Owned Private Utilities—Investor owned private utilities are private for-profit corporations that provide water and sewer services to the public. Investor owned private water and sewer providers are regulated by the Public Utilities

Commission of Ohio (PUCO) who regulates these utilities and must approve user rate increases. Currently there are fewer than 20 regulated companies providing utility services to Ohio residents. For more information see the PUCO web site at: <http://www.puco.ohio.gov/puco/index.cfm/information-by-industry/water-consumer-information/#sthash.dt1rZ4YR.sqRBHk2f.dpbs> .

## **28.02 A SHORT HISTORY OF THE COUNTY WATER AND SEWER LAW**

Counties were first authorized to establish sewer districts for sanitary and storm water purposes in 1911. Originally, commissioners could only establish sewer districts within three miles of a city. Each sewer district was to “consist of one or more main sewers with the necessary branch or connecting sewers” and the sewers were to “have an outlet into a river, purification plant or other proper place.” In 1913 counties were specifically authorized to construct “sewage treatment works”. And in 1917 commissioners were authorized to establish sewer districts anywhere in the unincorporated area of the county with legislation that removed the restriction for sewers beyond the “three mile limit.”

In 1927 emergency legislation was enacted that overhauled the procedural requirements in the wake of a Federal District Court ruling which raised constitutional “due process” questions on the sewer district law (*Connor v. Board of Commissioners of Logan County*, 12 F2d 789). Twenty years later, in 1947 the Legislature authorized commissioners to establish user rates and charges to finance, maintain, and operate sewer improvements, and this authority was clarified in 1957. The 1957 change in the law “raised serious doubts as to the power to finance improvements with special assessments”, and accordingly, a special session of the legislature was convened in 1958 to clarify the situation” (see *Haymes v. Holzemer*, 3 Ohio App. 3d. 377).

County authority for water supply was first enacted by the 107<sup>th</sup> General Assembly in 1917. Water supply improvements were to be constructed within county sewer districts and special assessments were authorized for water supply construction, operation, and maintenance. Additional authority was given to establish reasonable rates and charges, a power that was not provided for sanitary and storm water until 1947. As a part of the same legislation addressing sanitary and storm water issues enacted by the General Assembly in 1927 significant procedural changes were enacted as it related to water improvements.<sup>1</sup>

Given that significant changes to the county water and sewer laws had not occurred since 1927, in the case of water, and since 1958 in the case of sanitary sewers and storm water, it became evident that a modernization of the statutes was needed. Under the leadership of the law firm of Squires, Sanders & Dempsey, L.L.P., Summit County and CCAO, HB 549 was enacted by the 123<sup>rd</sup> General Assembly, effective March 12, 2001. This Act made significant revisions to the county water and sewer law and clarified many of the provisions related to storm water and drainage. Please refer to Exhibit 1 for an outline of the changes.

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<sup>1</sup> Larson, John. “H. B. 549—Background and Overview of Changes”. Paper prepared for CCAO Seminar, May 18, 2001.

Later, during the 127<sup>th</sup> General Assembly HB 562 was enacted, effective September 23, 2008, which primarily addressed the problem of preventing storm water from entering a combined sewer and causing a sewer overflow and inflows to sanitary sewers. This legislation also included clear authority for counties to be involved in the construction of prevention and replacement facilities. For a summary of the changes contained in this Act refer to Exhibit 2.

### **28.03 OVERVIEW OF THIS CHAPTER**

This Chapter of the *Handbook* will primarily deal with the authority of county commissioners pursuant to Ohio Revised Code Chapters 6103 and 6117 dealing with water, sewer, drainage, and storm water prevention and replacement facilities. It will also include other appropriate statutory references not contained in these two primary Chapters. Commissioners may establish sewer districts under ORC Chapter 6117 to provide sanitary sewer, drainage, and storm water prevention and replacement facilities. ORC Chapter 6103 allows commissioners to acquire, construct, operate, and maintain public water supply facilities within one or more county sewer districts.

In addition, in accordance with ORC Section 6117.012, a relatively new authority for commissioners, authority is granted to conduct a program or projects to prevent storm water from entering sanitary sewers and causing an overflow or to prevent an inflow or infiltration of storm water into a sanitary sewer. In this regard, the commissioners also may construct and incentivize prevention and replacement facilities such as vegetated swales, permeable pavement, rain barrels, construction of wetlands, riparian buffers, and other practices that use natural processes to filter or reuse rain water.

This Chapter will be divided into four major parts as outlined at the beginning of this Chapter. As such there will be some repetition of certain statutory provisions because a number of the procedures and other legal requirements apply to all four types of projects and facilities: (1) sanitary sewers (2) water supply (3) drainage, and (4) storm water, prevention and replacement facilities. This approach is being used for the ease of the user who will be interested in one specific type of improvement. This approach, while making the Chapter longer, will also help to highlight some of the differences between the law and its application to the four types of facilities. Exhibit 3 includes a table that summarizes a number of the comparable sections of ORC Chapters 6103 and 6117 to show the similarity between the two ORC Chapters.

It also should be noted that this Chapter will not address drainage improvements authorized in ORC Chapters 6131, 6133, 6135, and 6137, the so called “petition ditch” laws. Likewise, it will not address drainage improvements under ORC Chapter 1515 by Soil and Water Conservation Districts. For additional information on these “petition ditch” drainage provisions refer to Chapter 29 of this *Handbook*.

### **28.04 REGIONAL WATER AND SEWER DISTRICTS**

While this Chapter may refer to Regional Water & Sewer Districts at times, there will be



no detailed discussion of this organizational option for the provision of water, sewer and drainage facilities. The law on Regional Water & Sewer Districts is contained in ORC Chapter 6119.

County commissioners are sometimes involved in the establishment of a Regional Water and Sewer District by petitioning the probate court to establish a district. A petition for establishment of a regional district can be signed by one or more counties, municipalities, or townships, or by any combination of these jurisdictions (ORC 6119.02).

Counties can also advance funds requested by a regional district pursuant to an agreement with the regional district which specifies whether and when the funds will be repaid. The amount of funding may not exceed the benefits the commissioners determine will be derived from the regional district. The funds are generally considered start-up costs for the regional district for the preparation of a plan of operation of the district and for other purposes of the district (ORC 6119.04).

Another way to provide funds for a regional district is for the commissioners to submit a property tax levy to the electors. Such a levy is for “the purpose of paying the cost of the preparation of plans, specifications, surveys, soundings, drillings, maps, and other data needed or determined necessary in order to develop plans for the proper purification, filtration, and distribution of water or proper collection and treatment of sewage within the county or a part thereof, or beyond the limits of the county but within the same drainage area as is in part within the county.” Such a levy is limited to .3 mills and may be levied for not more than five years (ORC 6119.31). The levy can only be voted on at a general election (ORC 6119.32).

Commissioners may also issue debt for not more than 10 years for “the purpose of paying the cost of the preparation of the data needed or determined to be necessary or appropriate in order to plan for the proper supply, purification, filtration, and distribution of water, the proper collection, treatment, and disposal of sewage, or the proper collection, control, abatement, or treatment of surface and subsurface drainage, each and all within the limits of the county or a part of the county or beyond the limits of the county but within the same drainage area as is in part within the county. . .”. Debt may also be issued by the county to pay for the acquisition of real estate or interests in real estate for improvements for any of the purposes of the regional district (ORC 6119.36).

## **28.05 ESTABLISHMENT OF COUNTY SEWER DISTRICTS**

County commissioners have the authority under Ohio law to establish county sewer districts to preserve and promote the public health and welfare. To establish a sewer district the county commissioners must adopt a resolution and describe the area included within the district. Some counties have established the entire county as a sewer district and then construct individual projects on an “improvement area” or “sub-district” basis. The sub-district may be for the purpose of sewer, water, or drainage purposes and may be popularly referred to as a “water district” or “drainage district”, but technically they are established under the sewer district law. Sanitary sewer, drainage and storm water

prevention and replacement is authorized in ORC Chapter 6117, while water supply authority is contained in ORC Chapter 6103.

Generally, a county sewer district or sub-district may be established only in the unincorporated area of the county. Once a district is established it may be consolidated or merged with another district or its boundaries may be modified as determined by the commissioners. When establishing districts the commissioners may have a professional engineer do survey work to determine the appropriate boundaries of a district. Each district must be given a name or number in the resolution establishing the district.

## **28.06 INCLUSION OF MUNICIPAL TERRITORY IN A COUNTY SEWER DISTRICT AND OPERATIONS INSIDE MUNICIPALITIES**

In order for any land located within a municipality to be included in a county sewer district the municipality must adopt an ordinance or resolution consenting to the inclusion. Land within a municipality may be a separate sewer district within the city or village or may be a part of a district that includes the territory of other political subdivisions. Otherwise no land located in a municipality may be included in a county sewer district (ORC 6117.03).

However, in the case where water, sewer, drainage, and storm water prevention and replacement facilities are being acquired, constructed, maintained or operated in a county sewer district within a municipality the following requirements apply (ORC 6103.03, 6117.04):

1. The acquisition, construction, maintenance, and operation of facilities must be authorized by ordinance or resolution of the municipality.
2. All damaged roads, curbs, sewers, water lines and other public improvements must be replaced or restored in a reasonable period of time by the county and the costs incurred may be a part of the project cost.
3. The municipality, with approval of the commissioners or by prior written agreement, can use the facilities if they comply with rules established by the commissioners, subject to any requirements of Ohio EPA.

Counties also have the authority to construct a sewer or water line inside of a municipality if it is necessary to serve county sewer districts located wholly outside of the municipality under certain circumstances. In this case, the water or sewer line can be constructed in municipal streets and alleys if they are restored to their original condition.

Prior to preparing plans and specifications for the improvement, the county is required to give the municipality the opportunity to cooperate in the construction and use of the water or sewer line pursuant to ORC Sections 6103.26, 6117.03, 6117.04, or as provided in ORC Section 6117.41, as will be described in the next section (ORC 6103.26, 6117.40). It appears that this authority does not apply to drainage and storm water prevention and

replacement improvements, however, contracts with municipalities for these types of facilities are authorized.

Finally, the county has no authority to regulate the utility rates of users of a municipal utility, unless there is such a provision in a contract between the municipality and the county (ORC 307.042). Similar restrictions apply to municipalities (ORC 715.90).

### **28.07 JOINT USE OF WATER, SEWER, DRAINAGE AND PREVENTION AND REPLACEMENT FACILITIES & CONTRACTS WITH OTHER PUBLIC AGENCIES**

Once a sewer district is established the county may contract with any public agency to prepare plans, specifications, and estimates of cost for the joint use of water, sewer, drainage, and storm water prevention and replacement facilities. Such a contract may include provisions on the acquisition, construction, maintenance, operation and joint use of existing or new facilities. This contracting authority is very broad and includes the ability to contract with the state, any state agency or subdivision, and with municipalities or other subdivisions (ORC 6103.21, 6117.41).

These contracts must specify the terms of compensation to the county or other public agency for owning, acquiring, constructing, or agreeing to acquire or construct facilities that are to be jointly used. The contract must address how the operation and maintenance costs will be allocated between the contracting parties, which may be an agreed to price based on units of flow. If the county is the responsible party to own, acquire, construct, operate, and maintain the facilities, the county retains full control and management of the facilities; if the other party serves in this role they retain the control, unless the contract provides otherwise. In addition, if the county is conveying the facilities to a municipality as provided for in ORC Sections 6103.04 or 6117.05(B), these provisions do not apply (ORC 6103.22, 6117.42).

When entering into such joint use contracts, the contract may provide that payments can be made by the levy of taxes, collection of special assessments, or by sewer rates and charges (ORC 6103.23, 6117.43). Any payments under such joint use contracts must be credited to the proper fund for the acquisition, construction, operation or maintenance of the facilities (ORC 6103.24, 6117.44).

### **28.08 STATUS OF LAND IN A COUNTY SEWER DISTRICT AFTER ANNEXATION TO A MUNICIPALITY**

Land in a county sewer district which is annexed to a city or village remains under the jurisdiction of the county until all of the improvements are acquired or completed or until the county has abandoned the facilities. This “grandfather clause”, however, only applies to improvements when the county has adopted a resolution of necessity, one of the first procedural steps required to initiate a specific improvement. If a sewer district has been established but a resolution of necessity has yet to be adopted, then this grandfather clause is not applicable.

Counties also have jurisdiction after these improvements are made in annexed territory as it relates to the management, maintenance, and operation of the facilities, including the right to establish rules and rates and charges for the use of the facilities and for connections to the facilities. It should be noted that these provisions apply equally to water, sewer, drainage, and prevention and replacement facilities.

Another option is to negotiate the sale of the facilities to the municipality. If county facilities are conveyed to the municipality then the city or village, as the new owner, has all rights previously retained by the county, however, the county may retain the right to joint use of the facilities.

Neither annexation nor the sale of facilities to a municipality will have any impact on previously issued debt for the improvement or on any special assessments that have been levied. In addition, these same provisions apply in the case of territory served by a county sewer district and the land is subsequently incorporated into a new municipality.

## **28.09 POWERS OF COMMISSIONERS WITHIN SEWER DISTRICTS AND GENERAL AUTHORITY TO ADOPT RULES**

Counties may acquire, construct, maintain, and operate sewer, water, drainage, and prevention and replacement facilities as defined in ORC Sections 6103.01 and 6117.01 as will be explained in greater detail later in this Chapter. Commissioners may provide for the protection of their facilities and may prevent the pollution and unnecessary waste of water (ORC 6103.02(A) and 6117.01(B)(1)).

Commissioners have also been granted a general rule making authority as it relates to county owned or operated water, sewer, drainage, and storm water prevention and replacement facilities in a county sewer district. Commissioners may adopt rules relating to the construction, maintenance, protection, and use of county owned or operated facilities. The rules also can address issues such as the establishment and use of connections; termination of services for non-payment of rates and charges; and, the establishment and use of security deposits (ORC 6117.01(D)). Other rule-making authority will be described later in this Chapter. Of particular interest are rules authorized in ORC Section 6117.012 relating to storm water inflows, sewer backups, and combined sewers as explained in Section 28.37.

Commissioners also have the authority to contract with other public or private entities for the management, maintenance, operation, and repair of its facilities. Commissioners may contract for water to be supplied to a sewer district and for a proper outlet for wastewater or storm water and for its treatment, disposal and disposition. (ORC 6103.02(A), 6117.01(B)(1)).

Counties also may enter into contracts with townships whereby the township pays all or part of the cost of constructing, maintaining, repairing, or operating any water supply improvement which provides water to the township. The power does not restrict the

power of commissioners to levy special assessments or limit rates charged for water (ORC 6103.031).

## **28.10 ESTABLISHMENT OF SANITARY ENGINEERING DEPARTMENT AND APPOINTMENT OF SANITARY ENGINEER**

Commissioners may establish a sanitary engineering department and may appoint a registered professional engineer to be the county sanitary engineer to administer ORC Chapters 6103 and 6117 or other county commissioner duties relating to sanitation, drainage, or water supply (ORC 6103.02(B), 6117.01(B)).

In this regard, ORC Section 343.01 provides the sanitary engineer or the department “shall assist the board of county commissioners . . . in the performance of their duties under this chapter and sections 3734.52 to 3734.575 of the revised code” relating to Ohio’s solid waste management law. In practice only a few counties and joint districts use a county sanitary engineer for solid waste purposes and primarily in those counties that operate solid waste facilities.

For more information on Ohio’s solid waste law refer to Chapter 32 of this *Handbook*. In addition, it should be noted that in some counties the county may utilize the services of a professional registered engineer by contract, especially in those counties that do not provide extensive services.

### **28.101 AGREEMENTS WITH COUNTY ENGINEER TO PERFORM SANITARY ENGINEER RESPONSIBILITIES RELATING TO WATER, SEWER OR DRAINAGE**

Commissioners may enter into an agreement with the county engineer to perform the duties of the county sanitary engineer (ORC 315.14). Such an agreement may include the county engineer receiving county paid compensation, in addition to the engineer’s statutory compensation, as agreed to between the commissioners and the engineer.

The county engineer has the choice of being a “full-time” engineer and receiving higher statutory compensation if the engineer does not engage in the private practice of engineering or surveying during the term of office. A county engineer who becomes the county sanitary engineer is not engaging in private practice; and, therefore, continues to receive the “full-time” engineer compensation.

In the case of water and sewer responsibilities the commissioners may offer the county engineer the option of performing those responsibilities pursuant to an agreement at their discretion. In the case of drainage responsibilities under ORC Chapter 6117, however, commissioners are required to first offer an agreement to the county engineer to serve in this capacity when the county initially decides to perform drainage work under this ORC Chapter (ORC 6117.01(C)). The county engineer has 30 days to accept or reject the offer made by the commissioners. It should be noted that the commissioners also have the authority to enter into a similar agreement with the county engineer to serve as the

county building inspector. For additional information refer to Chapter 72 dealing with county elected officials compensation.

## **28.11 CONSTRUCTION OF FACILITIES IN THE UNINCORPORATED AREA OF THE COUNTY**

Generally, prior to any person constructing water, sewer, drainage or storm water prevention and replacement facilities in the unincorporated area of the county the plans and specifications for such facilities must be approved by the commissioners (ORC 6103.02(D), 6117.01(E)). The construction of these facilities is supervised by the county sanitary engineer. All costs incurred in connection with the construction must be paid by those constructing the facilities.

In the case of drainage plans they must first be submitted to the county engineer at least 30 days prior to the date they are submitted to the commissioners. The county engineer reviews the plans and if it is determined that the proposed drainage facilities will have a significant adverse effect on roads, bridges, or culverts or on existing maintenance, the engineer may submit a written opinion to the commissioners not later than 30 days after the engineer receives the plan. Commissioners may not take action on the plan until after receiving a written opinion or waiver of submission from the county engineer within the 30 day period. If neither is received from the engineer, the commissioners may proceed.

## **28.12 AUTHORITY TO PERFORM SURVEYS**

ORC Sections 6103.02(E) and 6117.011 generally authorize the county to make surveys of water supply, sanitary facilities, drainage facilities, and storm water prevention and replacement facilities within any sewer district where the county anticipates the acquisition or construction of any of the authorized types of facilities. The surveys may include any needed drawings, plans, specifications and estimates of the cost of labor and materials, detailed plans, other items of cost, assessment rolls, and other facts, material, data, reports, information or recommendations. A contract can also provide for the engineering supervision of work.

A resolution must be adopted that details the necessity and purpose of the survey. Commissioners may use sanitary engineer employees or may contract for survey services. These contracts are considered contracts for professional design services and are thus exempt from competitive bidding. Such a contract is also exempt from the certification of availability of funds requirement of ORC Section 5705.41(D), but must be filed with the county auditor. Payments for the contract may be made from the general fund or any other fund legally available. If debt has been issued to pay for facilities the cost for the survey can be paid from bond proceeds, or if payments were made from another county fund the fund may be reimbursed from bonds issued for the facilities.

### **28.13 ESTABLISHMENT OF SEPARATE FUND AND USE OF MONIES RECEIVED FOR WATER, SEWER AND DRAINAGE PROJECTS**

All monies collected for rates, charges, penalties, security deposits, and related receipts must be deposited into a separate fund and used only for the benefit of the district (ORC 6103.02 and 6117.02(C) and (D)). This applies to each district or sub-district and thus applies to water, sewer, drainage, and storm water prevention and replacement improvements equally. These separate funds are usually referred to as enterprise funds and classified as a proprietary fund.

Monies in these enterprise funds must first be used to pay for the cost of the management, maintenance, and operation of facilities. This may include the county share of costs under contracts for the acquisition, construction, or use of facilities. It can also include costs incurred under a cost allocation plan, as will be explained later; costs incurred by the county sanitary engineer or sanitary engineering department; or, by a federal or state grant program. These costs are paid first, however, only if there is no indenture or trust agreement related to the issuance of debt for the facility or project that requires the money in the enterprise fund to be used differently.

Secondly, after the monies are applied to the costs specified above, money in the enterprise fund may be applied to the payment of any outstanding debt charges or for the funding of a bond retirement or other fund established for the payment of, or security for, county debt related to the facility.

If there is any surplus it can be used for the acquisition or construction of facilities or for the payment for costs related to the acquisition or construction of facilities under a cooperative contract.

### **28.14 ALLOCATION OF INTEREST EARNED ON WATER, SEWER, AND DRAINAGE FUNDS**

While water, sewer, and drainage rates and charges are maintained in a separate enterprise fund in the county treasury, interest earned on monies in the enterprise fund must be paid to the general fund. In 1984, the Attorney General, in Opinion 84-085, concluded that the money collected from sewer rates and charges are not in the county treasury as custodial funds, but are for the purpose of operating the sewer district. As such ORC Sections 135.351 and 5705.10 requires the interest to be credited to the county general fund.

It should be noted that if tap-in fees are being collected in installments on the sewer bill this could be an exception to this rule, if the tap-in fees have been pledged to pay debt in constructing all or a part of the improvement through a trust indenture or other bond document. In this case counties should check with the county prosecutor to determine proper treatment of interest earnings. It should also be noted that the opinion referenced above only addressed the issue as it relates to sewer projects, however, it

would probably apply in the same way to monies in county water and drainage enterprise funds.

Some counties may want to return interest earnings to the enterprise funds, which may help providing funds to moderate the need for rate adjustments. In this case the commissioners can appropriate general fund money equivalent to interest earned to the enterprise fund. The county treasurer, however, would need to agree to provide an analysis of the amount of interest earned that was attributable to enterprise fund monies. In other cases an offset could be made by the county general fund not fully recovering authorized indirect costs.

### **28.15 ALLOCATION OF INDIRECT COSTS TO WATER, SEWER AND DRAINAGE FUNDS**

Unlike other funds in the county treasury a water, sewer or drainage fund established under ORC Chapters 6103 and 6117 may be charged for both direct and indirect costs incurred by other county funds that benefit these enterprise funds. In order for these other funds to be paid or reimbursed by the enterprise fund, commissioners must prepare and adopt a cost allocation plan. The plan must identify, accumulate, and distribute allowable direct and indirect costs that may be paid from each such enterprise fund. The plan must include the methodology used to allocate costs.

The plan will authorize payments from the enterprise fund for costs incurred by the county general fund or other funds in the county treasury which benefit and are necessary and reasonable for the proper and efficient administration of the water, sewer or drainage district or sub-district.

The cost allocation plan cannot authorize payments for any general government expense required to carry out overall county government responsibilities. The plan must conform to U. S. OMB Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," published May 17, 1995. Cost plans are prepared for many counties under the CCAO sponsorship of Maximus (ORC 6103.02(H), 6117.02(E)).

### **28.16 AUTHORITY TO ENTER PRIVATE PROPERTY**

The county sanitary engineer may enter any public or private property for the purpose of making surveys or inspections needed to establish sewer districts and for the design and evaluation of water, sewer, drainage and prevention and replacement facilities. Prior to entering upon such property, notice must be sent to the property owner at least five days in advance by either first class or certified mail.

No public or private owner can forbid entry after notice is given and the sanitary engineer, or his authorized representative, is identified in writing. If damage is done to the property when making surveys or inspections, the commissioners must pay for the damage. The cost resulting from the damage can be included in the cost of the facilities and may be included in any special assessments levied on the project (ORC 6103.02(E), 6117.01(F)).



## **PART 2**

### **SEWER FACILITIES**

#### **28.17 PREPARATION OF GENERAL PLAN OF SEWERAGE**

After the establishment of a sewer district and the delineation of its boundaries and prior to undertaking a sewer project a general plan of sewerage must be prepared for the district (ORC 6117.06). The general plan takes into account existing facilities and prospective needs for additional sewage facilities.

This general plan is submitted to the commissioners for approval. When a resolution is adopted approving the plan, a copy is sent to Ohio EPA for approval, if EPA has requested the general plan be prepared to address water quality violations. After approval of the general plan by commissioners and by Ohio EPA, if required, a resolution may be adopted which generally describes the improvement that will be constructed or acquired, declaring that the improvement is necessary for the preservation and promotion of the public health and welfare, and specifies whether special assessments will be used to pay for any part of the improvement.

#### **28.18 STATUTORY DEFINITIONS RELATING TO SEWER PROJECTS**

ORC Section 6117.01(A) includes a series of definitions that are important to understand for the purposes of this part of this Chapter of the *Handbook*. This section defines such terms as current operating expenses, construction, maintenance, and combined sewer. It defines "sanitary facilities" to mean:

. . . "sanitary sewers, force mains, lift or pumping stations, and facilities for the treatment, disposal, impoundment, or storage of wastes; equipment and furnishings; and all required appurtenances and necessary real estate and interests in real estate."

In addition, some of the provisions in this part of the Chapter will also deal with certain drainage and prevention or replacement facilities as they relate to combined sewers and storm water inflows into sanitary sewers. Thus, the following definitions are important to understand this part of the Chapter, in addition to their applicability to the part of the Chapter on drainage:

"Drainage facilities" means storm sewers, force mains, pumping stations, and facilities for the treatment, disposal, impoundment, retention, control, or storage of waters; improvements of or for any channel, ditch, drain, floodway, or watercourse, including location, construction, reconstruction, reconditioning, widening, deepening, cleaning, removal of obstructions, straightening, boxing, culverting, tiling, filling, walling, arching, or change in course, location, or terminus; improvements of or for a river, creek, or run, including reinforcement of banks, enclosing, deepening, widening, straightening, removal of obstructions, or change in course, location, or terminus; facilities for the protection of lands from the overflow of water, including a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, retention or holding basin, control gate, or breakwater; facilities for controlled drainage, regulation of stream flow, and protection of an outlet; the vacation of a ditch or drain; equipment and furnishings; and all required appurtenances

and necessary real estate and interests in real estate.

"Prevention or replacement facilities" means vegetated swales or median strips, permeable pavement, trees and tree boxes, rain barrels and cisterns, rain gardens and filtration planters, vegetated roofs, wetlands, riparian buffers, and practices and structures that use or mimic natural processes to filter or reuse storm water.

"Combined sewer" means a sewer system that is designed to collect and convey sewage, including domestic, commercial, and industrial wastewater, and storm water through a single-pipe system to a treatment works or combined sewer overflow outfall approved by the director of environmental protection.

As it relates to combined sewers, in addition to the general rule-making authority explained in Part 1 of this Chapter, ORC Section 6117.012 also gives specific authority to adopt rules relating to storm water inflows and combined sewers. The authority granted under this rule making authority is summarized in Section 28.37.

## **28.19 ACQUISITION OF PROPERTY AND EMINENT DOMAIN**

Commissioners have the right to acquire real property, any interest in real property, or an option to acquire real property needed for the acquisition, construction, maintenance, or operation of sewer improvements within or outside of a sewer district. They may purchase the real estate, interests in real estate, or rights by negotiation.

If the commissioners and the owner cannot agree to a purchase price, or to the amount of damages to be awarded, commissioners have the authority to acquire the property by eminent domain pursuant to ORC Sections 163.01-163.22, the regular process used to acquire property by eminent domain. Commissioners, however, may not use eminent domain to acquire real or personal property owned by any municipality (ORC 6117.39(A)).

In certain circumstances commissioners may utilize what is popularly referred to as "quick-take" eminent domain procedures. Quick-take can only be used in cases of a "public exigency" and can be used for sewer, in limited cases for drainage, and certain road projects. In quick-take actions, the county can take possession of condemned property before compensation litigation with owners is complete if they deposit "probable compensation" with the court.

A public exigency is defined as the following:

1. A finding by the Director of Ohio EPA that a public health nuisance caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions compels the immediate construction of sewers for the protection of the public health and welfare.
2. The issuance of an order by the board of health of a health district to mitigate or abate a public health nuisance that is caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions and compels the immediate construction of sewers for the protection of the public health and welfare.

3. With respect to an affected parcel of property, an improvement required as a result of a federally or state-imposed consent decree that prohibits future sewer inflows, combined sewer overflows, or sewer back-ups.

In the case of quick-take proceedings commissioners must adopt a resolution finding that it is necessary for the protection of the public health and welfare to appropriate the property. The resolution must also contain a detailed description of the property and the name and place of residence of the property owner. The resolution must include a dollar amount for the value of the property. This value must be supported by an independent appraisal and also include any damages to the residual property.

This amount of value along with any amount for damages to the residual property must be deposited with the common pleas court when the eminent domain petition is filed along with a copy of the resolution and a copy of the independent appraisal (ORC 6117.39(B)).

Finally, ORC Sections 6117.47 and 6117.48 address situations where the county is constructing trunk or main sewers. In these cases the county may purchase needed real or personal property or may use regular eminent domain procedures. The county also has the right to occupy any public road, street, or alley for the trunk or main sewer.

## **28.20 SEWER IMPROVEMENTS WHERE SPECIAL ASSESSMENTS WILL NOT BE LEVIED AND COLLECTED**

If the proposed improvement will not use special assessments for any part of the project, Ohio law provides for a more expedited process than in cases where special assessments are utilized. In this case the resolution noted above may authorize the improvement and expenditure of funds for the acquisition or construction of the improvement without following certain statutory requirements that must be followed for assessment projects.

Specifically, non-assessment projects are exempt from the provisions of ORC Sections 6117.06(C), (D), and (E), and 6117.07 to 6117.24. If commissioners choose not to authorize the improvement at this time, they may do so later in another resolution or may do so in a resolution authorizing the issuance of debt to pay for the improvement.

In a similar vein, ORC Section 133.15(A) provides that, when debt is issued for improvements where special assessments will not be levied, commissioners can authorize the improvement and expenditure of debt proceeds and other monies appropriated without going through the procedures generally required of assessment projects.

Finally, most of the procedures required for assessment projects can be eliminated if the commissioners levy a tax or proceed to issue debt pursuant to ORC Section 6117.311, as will be explained later in this Chapter.

## 28.21 SPECIAL ASSESSMENTS FOR SEWER IMPROVEMENTS MUST CONFER SPECIAL BENEFITS TO PROPERTY OWNERS

Perhaps one of the shortest sections of ORC Chapter 6117 is one of the more critical to understand. ORC Section 6117.30 is the basic enabling authority for commissioners to use special assessments when making sewer improvements. It is essentially the same language that applies to water supply facilities in ORC Section 6117.13. This section reads as follows:

“The cost of the acquisition or construction of sanitary . . . facilities to be paid by assessments shall be assessed, as an assessment district assessment, upon all the property within the county sewer district found to be benefited in accordance with the special benefits conferred, less any part of the cost that is paid by the county at large from other available funds. State land so benefited shall bear its portion of the assessed cost.”

This section has been interpreted on a number of occasions by courts, especially as to what it means for a property “to be benefited in accordance with the special benefits conferred” clause. In addition, courts have often used special benefit provisions as interpreted for other special assessment proceedings and for other types of improvements, both inside and outside of Ohio, in reaching conclusions on exactly what it means to confer special benefits.

One legal principle of defining special benefits to land is that “a special benefit to land may consist of either a present increase in its value, or a future or potential benefit . . .” and that the determination is a question of the particular fact situation (*D’Antuono v. City of Springfield*, 114 Ohio App. 102, 106). Further, another court, in finding that an assessment was void, declared the assessment void “. . . in that it substantially and materially exceeded the special benefits it conferred upon the land” (*Kangesser Foundation v. City of Euclid*, 159 N. E. 2d 919).

Another legal issue with special assessments deals with whether different classes of users can be assessed differently. Here one court ruled that the phrase in the statute requiring the assessment of “all the property within a county sewer district to be benefited” did not require uniform assessments, and “implies that different classes of property may exist within the sewer district and therefore different benefits may result”. (*Board of County Commissioners of Fairfield County v. Hessler, et al*, 5<sup>th</sup> District Court of Appeals Case # 2007 CA00028, decided 6-30-08).

Finally, in cases appealed from the probate court, dealing with an action to enjoin an improvement, higher courts have generally deferred to the trial court’s decision unless the trial court decision is characterized by “a clear abuse of discretion”.

For additional information refer to the following additional cases dealing with county special assessment projects:

- *Drillex, Inc. v. Lake County Board of Commissioners*. 159 Ohio App 3d 384.

- *Prechnicki v. McCormack, et al.*, 8<sup>th</sup> District Court of Appeals Case No. 73579, decided 7-30-98.
- *Haymes et al. v. Holzmer*, 3 Ohio App. 3d 377, 6<sup>th</sup> District Court of Appeals Case No. L-80-400, decided 10-9-81.

## **28.22 SEWER IMPROVEMENTS WHERE SPECIAL ASSESSMENTS WILL BE LEVIED AND COLLECTED**

If the proposed sewer project will levy and collect special assessments on property in the sewer district a much more rigorous and time consuming process must be followed for the sewer project. There are over 30 steps that need to be followed when using the special assessment procedures contained in ORC Chapter 6117. These procedures are detailed at the end of this Chapter in Exhibit 4.

### **28.221 DISCUSSION OF CERTAIN NOTICES TO COUNTY AUDITOR**

ORC Section 319.61 is a statute of general application to all political subdivisions that are authorized to make public improvements involving the levy of special assessments. Under this statute two types of notices must be given to the county auditor as follows:

1. A notice of intention to proceed with the public improvement.
2. A notice of the levy of special assessment or charges.

In Exhibit 4 at the end of this Chapter we have included both of these notices in the outline of the assessment procedure recommended. The “notice of intention to proceed” is the equivalent of the improvement resolution referenced in ORC Chapter 6117 and must be certified to the county auditor within 15 days of its adoption. In the case of the “notice of the levy of special assessments”, this resolution must be certified within 20 days after its adoption.

It should be noted that Division B(4) of this section defines “special assessments and charges” to mean “special assessments or charges excluding charges for utility services.” While some maintain this would exclude water, sewer, and other utilities from the notice requirement, only utility charges, not special assessments are exempt from the notice requirement.

The county auditor records these special assessments in a special assessment record that must be maintained in the auditor’s office. This filings are important because of the order of the lien that attaches with the assessment. In most cases the lien for special assessments takes priority over other liens with the exception of mortgage liens as further detailed in ORC Section 319.61.

## **28.23 LIMITATIONS ON THE RIGHT TO APPEAL SEWER IMPROVEMENTS TO THE PROBATE COURT**

While the previous section generally discussed appeals relating to assessment projects, this section will go into more detail and discuss various issues when appeals are perfected by property owners.

A property owner is required to give notice of intent to appeal and the basis for the appeal prior to the adoption of the improvement resolution. If such a notice of intent to appeal is not given, an appeal may not be taken later (*Gallman v. Board of County Commissioners of Mercer County*. 159 Ohio St. 253).

While some maintain that this notice is only required for projects involving two or more counties, this is not the case. In addition to the above cited case, the Eleventh District Court of Appeals, in the case *Blair v. Board of County Commissioners of Geauga County, et. al.* (Case No. 95-G-1960, decided 6-14-96) determined that the courts in interpreting ORC Sections 6117.09 and 6117.10 “have held that the section only set forth one procedure for bringing this type of administrative appeal.”

Basing its ruling on *Gallman*, the Third Appellate District Court in a case originating in Allen County in 1985 held that “in every appeal from an improvement determination, the appellant is required to file both a notice of the intent to appeal and a notice to appeal. The appellate court reached this holding even though the reference to the notice of intent to appeal was contained in R.C. 6117.10, not R.C. 6117.09.”

What causes some of the confusion and misunderstanding on this issue is the fact that the section heading in some versions of the Ohio Revised Code that precede the actual language in ORC 6117.10 reads “Appeal when improvement is located in two or more counties.” Yet, ORC Section 1.01 specifies that “. . . section headings . . . do not constitute any part of the law as contained in the ‘Revised Code’.” And while the first paragraph of this section specifies that when a project is located in two or more counties that an appeal is filed in the county where the property is located, the remainder of ORC Section 6117.10 also applies to projects in one county as well as to projects in two or more counties.

There are three reasons for which an appeal may be perfected by a property owner as detailed in Exhibit 4, step #15. If such notice is given then the commissioners must set a reasonable amount of a bond to pay for costs associated with the appeal if the property owner does not prevail. Then appeals must be perfected in the probate court within 10 days after the adoption of the improvement resolution.

In certain cases the ability to appeal is limited. If the Director of Ohio EPA has ordered the improvement as necessary for the public health and welfare pursuant to ORC Section 6117.34, no appeal may be taken to the probate court as it relates to the necessity of the improvement, however, an appeal may be taken on the other two statutory bases for appeal.

Likewise, no appeal may be taken on the basis of (1) the necessity of the improvement or (2) the boundaries of the assessment district if owners of property that will be assessed for at least 85% of the cost of the improvement have provided written consent to the decision by the commissioners to proceed to adopt the improvement resolution (ORC 6117.09). If an appeal has been perfected in the probate court on the basis of these two reasons and the county later receives written consent from property owners who will be assessed for at least 85% of the cost of the improvement the county can then file a motion to dismiss the appeal. It should be noted that this does not limit the ability for a property owner to appeal on the basis of the third reason for which an appeal may be perfected—on the basis of the apportionment of the tentative assessment.

## **28.24 PROCEDURAL PROVISIONS RELATING TO APPEALS OF SEWER IMPROVEMENTS**

If an appeal is filed, the county must then file with the probate court the original papers in the improvement proceedings along with a transcript of the proceedings from the commissioners' journal certified by the clerk. These items must be filed with the court within 10 days of the property owner filing the required bond with the county auditor. The probate court then docketed the case. After this initial step, following are the general procedural steps in the appellate process:

1. After the case is docketed, the court selects a date for a hearing on all preliminary questions in the appeal and for the examination of papers and commissioners' proceedings as submitted by the clerk. This is to occur within five days after the case is docketed (ORC 6117.13).
2. At the preliminary hearing the court hears and rules on preliminary motions and questions arising under the appeal. If the court finds that the proceedings are irregular, or the appeal was not perfected properly, the court dismisses the appeal and taxes costs on the appealing property owners (ORC 6117.14).
3. If the appeal is not dismissed the court sets a date for a trial within 20 days after the preliminary hearing.
4. The court then publishes in a newspaper of general circulation a notice of the appeal including the time and place of the trial. This notice must be published twice. The first publication must be printed at least 15 days before the trial; the second at least eight days before the trial.

If more than one property owner appeals the cases are consolidated, but the court considers the facts that surround each appeal separately (ORC 6117.16).

## **28.25 DECISION BY THE PROBATE COURT**

At the end of the trial the court must find separately on each claim to adjust the tentative assessment assigned to each property owner. Depending on the basis of the appeals the

court also needs to find:

1. Whether the improvement is necessary for the public health, convenience, welfare; or
2. Whether the cost of the improvement will exceed the benefit to the district; or
3. Whether the boundaries of the assessment district should be changed.

If the probate court finds that the cost of the improvement exceeds the benefit, it declares the improvement not necessary for the public health, convenience, or welfare and then the commissioners must abandon the improvement (ORC 6117.17, 6117.19).

When appeals pertain to the boundaries of the assessment district or the apportionment of the tentative assessment and the court determines that the boundaries of the assessment district or the tentative assessment should be changed, commissioners may make the changes and proceed with the improvement as modified as long as the court has not found that the improvement is not necessary or the cost of the improvement exceeds the benefits (ORC 6117.20). However, no property can be added to the assessment district unless the new owners have been notified by the court and have had the opportunity to be heard in court (ORC 6117.17).

While the general rule is that costs of the appeal are paid by the losing party, the probate court has considerable discretion on how to allocate costs among the parties to the appeal. See ORC Section 6117.18 for more information.

## **28.26 AUTHORITY OF COURTS IN SEWER PROCEEDINGS**

Ohio law provides some guidance to all courts that may be involved in court proceedings concerning a sewer project. This guidance applies to appeals pursuant to ORC Section 6117.09 and also court actions to enjoin, reverse, or declare void the sewer proceedings or to enjoin the collection of a tax or assessment. If the court finds a “manifest error” in the proceedings affecting the rights of a property owner the court may set aside the proceedings relating to the appealing property owner without affecting other parties that have not appealed.

Any court may accept parol testimony that the improvement will be conducive to the public health, convenience, and welfare and that any steps required by law have been “substantially complied with” even if there were errors or defects in records relating to the improvement, and may correct any “gross injustice” in assessments levied. Any court may, on final hearing, make such orders as the court deems equitable including ordering any assessment to stand for collection, that it be levied in whole or in part, or may perpetually enjoin the assessment or any part of it. Also, in the case where the assessment has already been paid under protest, the court may order all or a part of it to be refunded (ORC 6117.24).



## **28.27 APPEALS FROM THE PROBATE COURT**

Parties may appeal a decision of the probate court to the court of appeals and then to the Supreme Court. If the appeal is on the necessity of the improvement, the construction is delayed until all appeals have been exhausted. If, on the other hand, the appeal is on the basis or the nature of the assessment district or the apportionment of the tentative assessments, commissioners may proceed with the improvement as directed by the probate court in its ruling. When a higher court later rules on the other issues the county makes adjustments to conform to the final ruling of the court of appeals or the Supreme Court (ORC 6117.23).

## **28.28 ANNUAL CERTIFICATION OF ASSESSMENTS**

Assessments must be certified annually to the county auditor not later than the second Monday of September (ORC 6117.33). This includes assessments deferred pursuant to ORC Section 6117.061. The certification to the auditor must show both the assessments to be collected and those deferred. It must show the amount and time of collection for each assessment. The county auditor records all assessments in the sewer improvement record.

The assessments bear interest if bonds were issued or another type of loan was used to finance the improvement. The assessment constitutes a lien on the property and is paid with property taxes either annually or semiannually for a period of not more than 40 years. Assessments of \$25 or less are payable at the next payment of taxes. Assessments on the tax bill, if not paid when due, are subject to the same penalties and interest payments as for real property taxes.

For those assessments that have been deferred, the commissioners must review them each August. If it is determined that the circumstances have changed since the original deferment and the assessment is no longer inequitable, the assessment can be certified for collection. This certification of a previously deferred assessment must also be made by the second Monday of September. The payment of previously deferred assessments must be collected so as to correspond with the other assessments for which bonds have been issued, but in not less than five years. Also, the payment cannot be required before non-deferred assessments are due.

After assessments have been deferred for 20 years, however, they must be certified for collection unless the land is located in an agricultural district. In this case the period of collection is not more than 20 nor less than five years provided that assessments need not be made earlier than the last payment of non-deferred assessments.

## **28.29 ASSESSMENTS IN AGRICULTURAL DISTRICTS**

ORC Section 929.03 allows counties to levy sewer and/or water assessments, but the county is prohibited from collecting said assessments on property located within an agricultural district without the permission of the owner as long as the owner established

the agricultural district prior to the adoption of the resolution of necessity. An assessment may, however, be made on a lot surrounding a dwelling or other structure that is not used in agricultural production of not more than one acre or the minimum area required by local zoning or subdivision regulations if larger than one acre (ORC 929.03).

Notice to persons who could potentially establish an agricultural district must be given prior to the adoption of the resolution of necessity as detailed in Exhibit 4. For more information concerning agricultural districts see Chapter 93 of this *Handbook*.

### **28.30 DEFERRED ASSESSMENTS WHEN CONSTRUCTING TRUNK SEWERS TO AID DEVELOPMENT**

In addition to the general authority to defer assessments as authorized by ORC Section 6117.061, commissioners also may defer assessments for trunk sewer lines to aid in the establishment of new or expanded industrial plants, other industrial development, commercial, or residential development across agricultural land (ORC 6117.062).

This statutory provision was used in a number of past situations when the Ohio Water and Sewer (Rotary) Commission was in existence. This Commission provided 20 year interest free loans to extend trunk sewer lines to encourage development by deferring assessments when the trunk was predominately crossing agricultural land. This state program was used in a number of cases prior to the enactment of the agricultural districts law, which included provisions prohibiting the collection of assessments.

The Commission, which was administratively attached to the Ohio Department of Development, was abolished in 2013 with the enactment of legislation creating the new Ohio Development Services Agency. With the repeal of this interest free loan program this deferment statute no longer has much practical applicability. It does now apply primarily as a law to protect agricultural land owners located in agricultural districts whose assessments were deferred in the past and now must be collected because of the maximum 20 year deferment and loan provision. When this deferred assessment becomes due it cannot be collected because land may have been subsequently placed in an agricultural district which prohibits the collection of the assessment.

Assessments deferred prior to January 1, 1987, which were often limited to a maximum of 20 years, must be extended if the property owner makes a written request at least six months before the expiration of the original deferment and the land still qualifies for placement in an agricultural district. The property owner may also request that the deferred assessment be paid in installments instead at the end of the original 20 year deferment period. The request for installments must also be made at least six months before the expiration of the deferment and installments may be for up to an additional 20 years.

The law also requires the county to send notice by regular or certified mail to property owners who have been granted these types of deferred assessments at least 210 days before the expiration of the deferred assessment.

Nonetheless, in order to qualify for this type of deferment today the land must be listed on the tax duplicate as agricultural land. The request for deferment must be made during the five day period during which objections to a sewer improvement can be made. The county may defer such assessments and attribute the amount of the assessment to tap in charges.

A request for this type of deferment must identify the property; describe its present use and present classification for tax purposes; state the estimated market value of the land; must state why the benefit to the land will not be realized until the use of the land changes; and, must include the amount requested to be deferred. If commissioners defer the assessments they certify the deferred assessments to the county auditor along with those that are to be collected for the improvement. A fee of two percent is added to these deferred assessments. During the time of deferment a lien is placed on the property until the assessment is paid.

If these types of deferments are granted, commissioners must regularly review the use and ownership of the land. If it is found that the land no longer qualifies for designation as an agricultural district, and the land is no longer classified as agricultural on the tax duplicate, prior to the end of the deferment period, the full amount of the deferred assessment, without interest, is collected.

### **28.31 ASSESSMENTS FOR PLANS AND PRELIMINARY ENGINEERING PURPOSES**

While most assessments are for the construction of improvements, counties also may levy assessments for the following purposes:

1. For a general or revised general plan of sewerage of the district.
2. For detailed plans, specifications, estimate of costs, and tentative assessments for the improvement.
3. For costs to prepare a financing plan, for actual financing of the improvement, and for legal services.

These assessments are often referred to as preliminary engineering assessments and they must be apportioned according to benefits or tax valuation, or by a combination of these methods. The assessments may be for up to 20 years. Their use should be considered if the county is not confident of the support for the improvements or of the property owners' ability and willingness to pay the local costs of the improvements. In this manner, the county commissioners require the area property owners to make a commitment to pay the costs of preparing the plans and cost estimates for the project even if they later decide not to proceed with construction. Otherwise, these costs must be paid from existing sewer district funds or the general fund (ORC 6117.251). Some counties also utilize this section when planning and design costs are substantial regardless of whether the county believes the project will proceed. This is often referred to as a Detailed Planning Assessment (DPA).

In order to levy preliminary engineering assessments commissioners must first adopt a resolution that includes the following:

1. A statement that it is necessary to provide sanitary sewer improvements in a sewer district and to maintain and operate them.
2. A description of the type of improvement the county anticipates will be constructed.
3. A statement that funds are needed to pay the preliminary costs of the improvements that will be incurred prior to the time they will initiate proceedings for the construction of the improvements.

Before adopting this resolution commissioners must give public notice of the proposed resolution to determine the necessity of the improvements. The notice must include a description of the properties to be benefited by the improvements and include the time and place of the hearing. It must be published in a newspaper of general circulation in the county once a week for two consecutive weeks or by publication as provided in ORC Section 7.16. Notice can also be given by mailing a copy of the notice by first class or certified mail to the owners of the properties proposed to be assessed, or by a combination of these methods. The first publication or mailing must occur at least two weeks before the hearing.

At the hearing commissioners hear all persons whose properties are proposed to be assessed and the evidence it considers necessary. Commissioners then determine the necessity of the proposed improvements and direct the sanitary engineer to prepare tentative assessments.

Before adopting the resolution levying the assessments the law requires another notice to property owners. Commissioners must give notice either by one publication in a newspaper of general circulation in the county, or by mailing a copy of the notice by first class or certified mail to the property owners. The notice must be provided at least 10 days before the meeting where the commissioners will consider the assessment resolution and must include the time and place of the meeting.

At the hearing where assessments will be levied the commissioners hear all whose properties are going to be assessed, must correct any errors found, and may make such revisions that seems just. The commissioners then adopt the resolution levying the assessments on benefited properties. These assessments must be certified to the county auditor for collection.

No further action can be taken or work done for 10 days after the adoption of the resolution making the preliminary engineering assessments. If no appeal is taken during this 10 day period the action of the commissioners is final. If an appeal has been taken to the probate court no further action can be taken and no further work can be done on the improvement until the appeal is resolved. The board may issue debt for up to 20 years for preliminary engineering assessments.

## **28.32 MAINTENANCE ASSESSMENTS**

Counties may also assess property for maintenance and operation of sewage improvements after construction. The assessment may be for the maintenance, repair and operation of the improvement. No notice is required for these assessments unless the amount of the assessment exceeds 10% of the original cost of project construction. If the cost exceeds 10% then the procedure required for the original assessment must be repeated (ORC 6117.32)

## **28.33 PROPERTY TAX AND DEBT AUTHORITY FOR SEWERS**

While Ohio law grants authority to commissioners to levy property taxes for sanitary sewer improvements and for the operation and maintenance of facilities once constructed, these powers are infrequently used because most improvements are financed with special assessments, user fees, tap-in or connection charges, or using a combination of these methods. Indeed, some of these statutes seem outdated and may be irrelevant to contemporary financing of sewage facilities.

ORC Section 5705.19(P) authorizes commissioners to submit to the electors a property tax for maintaining and operating sewage plants and facilities. In the case of construction of sanitary sewer facility improvements, ORC Section 6117.31 gives authority for commissioners to “levy taxes in addition to all other taxes authorized by law” to pay for the sanitary engineer and his assistants and for paying for “that part of the cost of the improvement to be paid by the county or of the interest to accrue thereon . . .”. It should be noted that this authority is limited to situations where the county is paying all or part of the improvement with county funds.

This provision also provides that such a levy is subject to limitations in the law concerning the “aggregate amount, rate, maximum rate, and combined maximum rate of taxation”, but it and other sections of ORC Chapter 6117 make it clear that the county may pay all or any part of sewage improvements with general fund or other monies, although this almost never happens. For example ORC Section 6117.30 dealing with special assessments specifically refers to “any part of the cost that is paid by the county at large from other available funds”.

Commissioners are also granted the authority to “levy a tax under (under ORC Chapter 5705) upon all property listed and assessed for taxation in such sewer district or sub-district . . .” (ORC 6117.311). This tax is for the purpose of “paying for a part or all of the cost of any improvement . . . in a sewer district . . . or in a designated sub-district thereof” and must be submitted to the voters. This provision is also rarely used.

This provision of law also authorizes commissioners to issue bonds under the provisions of ORC Chapter 133. In this case, bonds can only be issued after approval by the electors of the sewer district or sub-district and the total net indebtedness may not exceed 5% of the total assessed value of the district or sub-district. The question of levying such a tax or issuing bonds must be certified to the county auditor, by a unanimous vote of the

commissioners, at least 75 days before the election and must include a map of the district or sub-district. A copy of the map must also be sent to the board of elections. Bonds issued under this section are exempt from the statutory debt limit in ORC Section 133.07.

Also of special significance is the fact that if the commissioners submit the question of a bond issue to the electors under ORC Section 6117.311 then public hearings and other proceedings for special assessment projects are not required, because most of those procedures only apply to assessment projects as explained previously.

In addition to the above statutes in ORC Chapter 6117, and more commonly used by counties, is the authority to issue revenue debt. In addition, recent changes to the law allow for the county to also issue industrial revenue bonds (IRB) for sewer projects, which appears to have been placed into the law for a very specific situation and its general applicability is questionable.

ORC Sections 133.07(C)(2)(b) and 133.08 allows revenue debt to be issued for sanitary sewerage systems or facilities. ORC Section 133.08(B)(1) also specifies that sanitary facilities “are hereby determined to qualify as facilities described in Section 13 of Article VIII, Ohio Constitution.” This constitutional provision allows for assistance that benefits “industry, commerce, distribution, and research” and “to create or preserve jobs and employment opportunities.” ORC Section 165.01 also defines eligible projects to include “sanitary facilities” under the industrial development bond chapter of the Ohio Revised Code. Finally, ORC Section 165.03 exempts sewer projects from the general requirement that IRB’s must be certified to the commissioners by a county designated community improvement corporation prior to the issuance of the debt.

#### **28.34 ESTABLISHMENT OF SEWER RATES AND CHARGES**

Commissioners must establish reasonable rates and charges for the use or availability to use sewers by those being served or capable of being served by the sewers (ORC 6117.02(A) & (B)). The fact that the collection of rates were mandatory and had to be charged of all persons who use, have the availability to use, and are capable of being served was confirmed in Ohio Attorney General Opinion 2014-031, which also found that commissioners do not have authority to waive such rates under the statute. At the same time the Attorney General ruled that commissioners may “. . . reasonably distinguish between properties that are served by a county sewer and properties that are capable of, but not currently, being served by a county sewer district.”

These sewer rates are user charges for the provision of sewer services. Rates may be changed at any time the commissioners feel is advisable. If the sanitary facilities are not owned by the county, but provided by contract, the rates to be charged, or the formula or methodology to determine user rates, must be included in the contract dealing with the use of the other facilities.

In addition, the commissioners need to establish the following rates and charges for service by a county sewer:

1. Penalties for late payments. It should be noted that courts have determined that the rules cannot provide for interest payments as a form of penalty (*Yoder, Holmes Co. Treasurer v. Morilo, Inc., et al.*, 119 Ohio App. 3d 257).
2. The amounts to be paid as a security deposit prior to obtaining sewer service.
3. Connection or tap-in charges. Tap-in charges must be paid before a person connects to a county sewer. There are two options for the payment of tap-in fees. First, a lump sum payment for the full amount of the tap-in fee may be required before the property connects. Second, the tap-in charge can be made in installments if the commissioners' rules so allow. If commissioners allow for installments, the rules must provide for the time when installments are due, the amount of the installments, the amount and type of security, carrying charges, and penalties for late or non-payments.

In addition, if installments are used, commissioners must certify to the county auditor the amount of the installment payment for each parcel, the total amount of installments for each parcel, and the number of installments required to be made. The auditor records these certifications in the sewer improvement record. These tap-in charges then may be billed with the sewer rates or user charges mentioned above.

### **28.341 DISCOUNTED RATES FOR SENIOR CITIZENS**

When establishing or modifying rates and charges commissioners may establish discounted rates and charges for persons 65 or older. When establishing discounted rates, commissioners must establish eligibility requirements for the discounted or reduced rates. This may include that a person is eligible for the homestead exemption property tax credit or is a low-and-moderate-income person (ORC 6117.02(F)).

### **28.35 COLLECTION OF RATES AND CHARGES**

Counties may provide for the collection of rates and charges themselves or they may contract with a financial institution to perform this service for the county. Commissioners, however, can only execute such a contract if requested by the county treasurer and the contract must be competitively bid if the amount exceeds the dollar bidding threshold. Under this type of contract the financial institution will receive sewer bill payments at a post office box, process the payments, and deposits them into the county treasurer's account. The institution also must provide the treasurer with daily receipt information (ORC 321.03).

### **28.351 COLLECTION OF DELINQUENT SEWER RATES AND CHARGES**

If sewer rates, charges, and tap-in fees paid in installments on the sewer bill are not paid when due, the county has a number of options to collect the delinquent bill as follows:

1. Certify the unpaid rates, charges, tap-in fees, and penalties to the county auditor for placement on the tax duplicate for collection. When placed on the tax duplicate the charges constitute a lien on the property (ORC 6117.02(C)(1)). It should be noted, however, that the lien attaches to the property only after the delinquent charges have been both certified and placed upon the tax duplicate by the county auditor. In cases where a transfer of property takes place prior to a lien attaching to the property, the new owner has no obligation to make the payment (OAG 81-030).

If the unpaid charges are placed on the tax duplicate the county treasurer is required to accept a partial payment equal to the full amount of the unpaid bill separate from payment of any unpaid taxes. When the payment of the full amount of the bill is made, the lien is released.

2. Take legal action against the party responsible for non-payment of the rates and charges.
3. Terminate sewer service under rules established by the commissioners. The law also specifically allows for the termination of water service when a sewer bill is not paid.
4. Use any security deposit to pay for any of the unpaid rates and charges as specified in rules established by the commissioners.

### **28.36 MANDATORY CONNECTIONS TO COUNTY SANITARY SEWERS**

County commissioners may, by resolution, order connections to sanitary sewers in county sewer districts if the board of health states that the reason for the improvement is to reduce or eliminate an existing health problem or hazard of water pollution (ORC 6117.51). By ordering the connection commissioners are also ordering the property owner, or in certain circumstances an agent, lessee, tenant, or occupant, to stop discharging into a cesspool, ditch, private sewer, privy, septic tank, semipublic disposal system, or other outlet. In order to require the connection the commissioners must also find that the sewer is available and accessible to the premises after this fact is certified by a registered professional engineer.

Connections, however, cannot be ordered in the following situations:

1. If OEPA has issued a discharge permit, other than a discharge to or from a semi-public disposal system.
2. If the waste is a result of keeping animals.
3. If the foundation wall of the structure is more than 200 feet from the sewer easement. This is measured from the nearest boundary of the easement or road right-of-way line.



4. If a dwelling is located on property valued for tax purposes under the CAUV program, even if the foundation wall is less than 200 feet to the sewer easement, if the easement was obtained by eminent domain due to a public exigency and the board of health also certifies that the home sewage disposal system is working properly.

In the resolution ordering a connection to a sanitary sewer the clerk is directed to serve the order on the property owner. The owner can be served personally, by leaving the order at the structure to be connected, or by certified mail. If it appears the owner did not receive the notice otherwise served, a notice must be published once in a newspaper of general circulation. If the owner refuses to be served then service is given by ordinary mail.

The property owner must comply with the order, by connecting to the sewer, within 90 days of being served. An owner may apply to the commissioners before the end of the 90 day period for a waiver. The commissioners may waive compliance with the connection order either temporarily or permanently and may attach conditions to any such approval.

If the owner refuses to tap-in to the sewer the commissioners can ask the county prosecutor to take legal action to enforce connection order. There are a number of legal actions, including injunction that can be used by the prosecutor.

It should also be noted that local health departments have the authority to require connections when a sewer is accessible. OAC 3701-29-06(I) reads as follows:

Whenever a sanitary sewerage system becomes accessible to the property, a household sewage disposal system shall be abandoned and the house sewer directly connected to the sewerage system.

In ruling on this issue, however, the Attorney General ruled that “if a person shows that, because of practical difficulties or other special conditions, strict application of (the) rule will cause him unusual and unnecessary hardship” that the health district may grant a variance unless “doing so will defeat the spirit and general intent” of the intent of the Department of Health rules or would be “otherwise contrary to the public interest (OAG 2010-019).

### **28.37 RULES ON DISCONNECTION OF STORM WATER INFLOWS AND TO PREVENT SEWER BACK-UP’S**

In addition to the general and other rule making authority granted to commissioners in county sewer districts as previously explained, the commissioners also have been granted additional and more specific rule making authority pursuant to ORC Section 6117.012. These rules apply to properties served by county sewers. These rules may require any of the following:

1. The disconnection of storm water connections and inflows to sanitary sewers if

the sewer is not operated as a combined sewer.

2. The disconnection of non-storm water inflows or connections to storm sewers if the sewer is not operated as a combined sewer.
3. The reconnection or relocation of these disconnected inflows pursuant to commissioners' rules, building codes, and health or other relevant codes.
4. Actions to prevent sewer back-ups where the property has previously experienced a back-up from a sanitary or combined sewer.
5. Actions to prevent storm water from entering a combined sewer and causing an overflow or inflow to a sanitary sewer. Prevention measures may include projects which separate storm water from a combined sewer or that uses a prevention or replacement facility.

Commissioners may finance these activities using sewer district funds, the county general fund, the proceeds of bonds, and loans grants or other money if permitted by the terms of the loan or grant in the following ways:

1. The cost of disconnections, reconnections, relocations, combined sewer overflow prevention, or sewer back-up prevention required by rules if the work is done by the county or by a contractor for the county. These improvements are subject to Ohio's prevailing wage law, competitive bidding, and performance bond laws.
2. Payments to property owners or a contractor hired by the owner for the cost of disconnections, reconnections, relocations, combined sewer overflow prevention, or sewer back-up prevention. In this case the work to be performed by the property owner has been approved in advance by the county and the property owner has provided the county with a statement that releases the county from liability. In addition, the contractor, while hired by the property owner, must be selected following a competitive selection process that is established in commissioners' rules relating to the program. These improvements are not subject to Ohio's prevailing wage law, competitive bidding, or performance bond laws.

The rules adopted by the commissioners must require reimbursement from the user or property owner of the costs expended by the county for these activities by the following methods:

1. Payment by a lump sum payment for the total costs incurred.
2. The payment can be paid in installments and collected with the sewer bill as a separate line item charge on the bill. In the case of installment payments, the interest rate may not exceed 10% and must be paid in no longer than 15 years. For those that do not make lump sum payments and decide to pay in

installments, commissioners must inform the county auditor of the number of installments to be paid and the total charges that will be itemized on sewer bills. The auditor records these charges in the sewer improvement record. If these charges are not paid, they can be certified for collection on the real property tax bill in the same manner as unpaid sewer bills can be collected, and constitutes a lien on the property.

3. The payment can be made as a special assessment and collected with real property taxes over a period of not more than 15 years with a maximum interest rate of 10%. Commissioners must certify these assessments to the county auditor who places them on the sewer improvement record and places them on the real property tax duplicate for collection. These assessments comprise a lien on the property.

The law allows a part of the costs of these charges to be paid by the county as a subsidy to the property owner. If a county chooses to subsidize these activities, the commissioners must specify the maximum amount of the cost that will be paid by the county that is not subject to reimbursement by the property owner or user. The county, however, can only provide the subsidy when one of the following applies:

1. A building code, health code, or other relevant code applies to the affected properties, or
2. A federal or state imposed consent decree is filed or recorded in court that prohibits any future inflows, combined sewer overflows, or sewer back-ups prohibited under rules adopted by the commissioners.

If no public easement or agreement exists for the county to maintain the types of activities specified above which are located on private property, the property owner is responsible for maintaining the improvements after their construction. In addition, commissioners may provide rate reduction credits against sewer bills if the owner implements a project or program which prevents storm water from entering a combined sewer and causing an overflow. An eligible project could include the use of a prevention and replacement facility to manage storm water that has been diverted from a combined sewer.

### **28.38 SEWER IMPROVEMENTS BY PETITION OF ALL PROPERTY OWNERS TO COUNTY COMMISSIONERS**

While it is most common for commissioners to initiate sewer improvements or be ordered to do so by Ohio EPA, Ohio law does allow petitions to be submitted to the commissioners by property owners who desire improvements. A petition must, however be signed by all property owners desiring the improvement. The petition, addressed to the commissioners, must request the county to acquire or construct and operate and maintain the improvement; describe the improvement and the lots and lands owned by the petitioners to be assessed to pay the cost of acquisition or construction,

maintenance, and operation of the improvement; consent that the property owned by the petitioners may be assessed to pay the cost of the improvement and of its maintenance and operation; and, waive the right to receive all legal notices otherwise required by law.

The commissioners then direct the county sanitary engineer to prepare the necessary plans, specifications and estimate of cost for the construction, operation and maintenance costs for the improvement along with a tentative assessment. The project can be expedited in the case of a petition project under certain circumstances. In order to expedite the project the property owners who petitioned for the improvement must state, in writing, that they have examined the estimated cost and tentative assessment and have no objections to either.

Another condition for an expedited project is for property owners to state, in writing, that they agree to waive their option to prepay their assessment in cash if bonds are to be used to finance the improvement prior to construction or acquisition. If these written statements are received from all petitioners the project is exempt from any of the notices that the law would normally require and also there will be no opportunity for the property owners to file objections to the improvement.

As is the case in non-petition improvements the tentative assessment is for the information of property owners and is not certified to the county auditor for collection. When the project is complete and the final cost is determined the county sanitary engineer prepares a revised assessment based on the actual cost. This actual cost is confirmed by resolution of the commissioners and then is certified to the county auditor for collection (ORC 6117.28). This must be done by the second Monday in August for placement on the next tax duplicate (6117.33).

Finally, in the case of an improvement initiated by petition there is no right to appeal to the probate court unless the commissioners refuse to proceed with the improvement. In the case of a rejection of the petition, or failure to approve the improvement, commissioners must receive notice of intent from the property owner that an appeal will be perfected and the property owner also must file the bond required under normal assessment procedures with the county auditor (ORC 6117.11).

### **28.39 CONTRACTUAL SEWER SERVICES UPON APPLICATION FROM A PERSON OR PUBLIC AGENCY**

In the case of properties located outside of any county sewer district or sub-district any person or public agency may apply for the provision of sewer services to the properties of the person or public agency. Such an application can be submitted by owners outside of the county as well as those within the county. If such application is made commissioners may acquire or construct facilities on terms the commissioners determine to be equitable.

The amount paid cannot be less than the original or comparable assessment for similar property located within the sewer district, or if there is no basis for comparison, the amount the commissioners feel are “reasonable and fairly reflective of that portion of the costs” attributable to the properties to be served in the application (ORC 6117.38).

These payments may be made in a lump sum, in installments as a part of tap-in fees, or by special assessments. If special assessments are used commissioners must follow the procedure required for assessment projects as detailed in Exhibit 4. Commissioners can only levy assessments on properties located within the county (ORC 6117.38(A)). It appears that this authority is rather dated and rarely used.

#### **28.40 PRIVATE CONSTRUCTION OF SEWER LINES**

County commissioners may also permit private individuals or organizations to construct sewer lines under county supervision in the unincorporated areas of the county “under such rules and regulations as may be necessary to administer this section” (ORC 307.73). Prior to allowing such construction, the county should adopt sound construction standards to assure acceptance of a quality system.

The resolution authorizing the construction must provide for the collection of a share of the total cost from property owners tapping into the line in the future. When this share is collected, it is then used to reimburse the individual or organization that originally constructed the line. The cost is to be based on front footage and cannot be greater than it would have been if the individual or organization had originally participated in the improvement. In addition, a connection fee can be established. The resolution must be filed with the county auditor.

The commissioners resolution implements this legal authority, but the resolution also generally provides for the execution of a Recoupment Agreement with the private individual or organization outlining the terms and conditions of the recoupment including the term of the agreement. The private individual or organization must request recoupment prior to the construction of the improvements.

#### **28.41 EPA ORDERED IMPROVEMENTS/FINDINGS AND ORDERS**

A board of health, municipality, or board of township trustees may file a written complaint with OEPA that unsanitary conditions exist in the county. If OEPA determines that it is necessary for the public health and welfare that sewage improvements need to be made in the unincorporated area of the county, OEPA makes this finding and orders the commissioners to take “corrective action” which usually results in the construction of improvements (ORC 6117.34). If commissioners fail to comply with the OEPA order the Attorney General can seek a writ of mandamus in court (ORC 6117.36).

In addition, OEPA can make a finding that a trunk or main sewer is necessary in the county for sanitary purposes. After such a finding, commissioners may make surveys, plans, and specifications for the sewer. Upon approval by the OEPA the commissioners

build and construct the trunk sewer and maintain it. They may also regulate and establish conditions for lateral sewers to tap into the trunk sewer (ORC 6117.46). If commissioners fail to comply with the OEPA order the Attorney General can seek a writ of mandamus in court (ORC 6117.36).

## **28.42 SALE OR DISPOSITION OF COUNTY OWNED SEWER FACILITIES**

Commissioners may sell or otherwise dispose of sanitary sewer facilities to another public agency or person if they determine such action is in the best interest of the county and those served by the sewers.

To effectuate a sale a resolution must be adopted stating the reasons for the sale and establish any terms and conditions of the sale. These terms and conditions may include such items as a minimum sale price, a schedule of rates and charges that will be initially paid for services, and other terms and conditions specified in the resolution.

The resolution must also specify a time and place for a hearing of objections to the sale. Notice that the resolution has been adopted and the time and place of the hearing must be published in a newspaper of general circulation, or as required by ORC Section 7.16, or once a week for two consecutive weeks. The public hearing cannot be held until at least 24 days after the first publication. In addition, a copy of the notice must be sent by first class or certified mail before the date of the second publication, to any public agency within the area served by sewer facilities.

After the public hearing no action can be taken for five days, during which written objections to the sale can be filed by residents or public agencies. Commissioners must consider the objections and then determine whether to proceed with the sale.

If the decision is to sell, commissioners must then receive bids after advertising once a week for four consecutive weeks in a newspaper of general circulation or as provided in ORC Section 7.16. Commissioners then may award the sale to a responsible bidder whose proposal is considered to be in the best interests of the county and of the users of the system. Commissioners may reject all bids. If the sale or disposition of sewer facilities is to a municipality under ORC Section 6117.05(B) then these procedures do not have to be followed.

## **28.43 PURCHASE OF SEWER FACILITIES**

Commissioners also have authority to purchase sewer facilities owned by any person or public agency to provide sewer service within a county sewer district. Prior to making such a purchase the county sanitary engineer must certify that the facilities are properly designed and constructed. Prior to purchase, commissioners must consult with the sanitary engineer to determine a reasonable price for the facilities. This sale may be finalized through a negotiation process. To pay for the acquisition commissioners may issue debt and use special assessments against benefited properties for all or part of the purchase. If assessments are used, regular assessment procedures must be

followed as if the project was being constructed (ORC 6117.38(B)).

### **PART 3**

## **WATER FACILITIES**

### **28.44 PREPARATION OF GENERAL PLAN OF WATER SUPPLY**

After the establishment of a sewer district or a water sub-district and the delineation of its boundaries and prior to undertaking a water project a general plan of water supply must be prepared for the district (ORC 6103.05).

This general plan is submitted to the commissioners for approval. When a resolution is adopted approving the plan, a copy is sent to Ohio EPA for approval if EPA has requested the general plan be prepared to address drinking water quality issues. After approval of the general plan by the commissioners and by Ohio EPA, if required, a resolution may be adopted which generally describes the improvement that will be constructed or acquired, declaring that the improvement is necessary for the preservation and promotion of the public health and welfare, and specifies whether special assessments will be used to pay for any part of the improvement.

### **28.45 STATUTORY DEFINITIONS RELATING TO WATER PROJECTS**

ORC Section 6103.01 includes a series of definitions that are important to understand for the purposes of this part of this Chapter of the *Handbook*. This section defines such terms as current operating expenses, construction, maintenance, and other terms. The most important definition in this section, however, is the definition of “public water supply facilities” to mean:

. . . “water wells and well fields, springs, lakes, rivers, streams, or other sources of water supply, intakes, pumping stations and equipment, treatment, filtration, or purification plants, force and distribution lines or mains, cisterns, reservoirs, storage facilities, necessary equipment for fire protection, other related structures, equipment, and furnishings, and real estate and interests in real estate, necessary or useful in the proper development of a water supply for domestic or other purposes and its proper distribution.”

### **28.46 ACQUISITION OF PROPERTY AND EMINENT DOMAIN**

Commissioners have the right to acquire real property, any interest in real property, or an option to acquire real property needed for the acquisition, construction, maintenance, or operation of water improvements within or outside of a sewer district. They may purchase the real estate, interests in real estate, or options by negotiation.

If the commissioners and the owner cannot agree to a purchase price, or to the amount of damages to be awarded, commissioners have the authority to acquire the property by eminent domain pursuant to ORC Sections 163.01-163.22, the regular process used to acquire property by eminent domain. Commissioners, however, may not use eminent

domain to acquire real or personal property owned by any municipality (ORC 6103.25). Likewise, the county does not have “quick take” eminent domain authority for water improvements as they do for certain sewer improvements as explained in Section 28.19 of this Chapter.

#### **28.47 COUNTY PAYMENTS TO SCHOOL DISTRICTS WHEN TAXABLE WATER SUPPLY FACILITIES ARE ACQUIRED**

Commissioners have the authority to make payments to school districts if real or personal property acquired by the county for water supply purposes was subject to taxation prior to its acquisition by the county. The amount of such a payment may be for all or a part of the taxes the school district would have received if the county had not acquired the property. To make such payments commissioners must adopt a resolution and payments may be made to any city, local, exempted village or JVS district (ORC 6103.25).

#### **28.48 WATER IMPROVEMENTS WHERE SPECIAL ASSESSMENTS WILL NOT BE LEVIED AND COLLECTED**

If the proposed improvement will not use special assessments for any part of the water project, Ohio law provides for a more expedited process than in cases where special assessments are utilized. In this case the resolution noted above may authorize the improvement and expenditure of funds for the acquisition or construction of the improvement without following certain statutory requirements that must be followed for assessment projects.

Specifically, non-assessment projects are exempt from the provisions of ORC Sections 6103.05(C), (D), and (E), 6103.06, 6103.07, and the appellate procedures in ORC Sections 6117.09 to 6117.24. If commissioners choose not to authorize the improvement at this time, they may do so later in another resolution or may do so in a resolution authorizing the issuance of debt to pay for the improvement.

In a similar vein, ORC Section 133.15(A) provides that when debt is issued for improvements where special assessments will not be levied commissioners can authorize the improvement and expenditure of debt proceeds and other monies appropriated without going through the procedures required of assessment projects.

#### **28.49 SPECIAL ASSESSMENTS FOR WATER IMPROVEMENTS MUST CONFER SPECIAL BENEFITS TO PROPERTY OWNERS**

Perhaps one of the shortest sections of ORC Chapter 6103 is one of the more critical to understand. ORC Section 6103.13 is the basic enabling authority for commissioners to use special assessments when making water improvements. It is essentially the same language that applies to sewers and drainage and prevention and replacement facilities in ORC Section 6117.30. This section reads as follows:



“The cost of the acquisition or construction of water supply facilities to be paid by assessments shall be assessed, as an assessment district assessment, upon all the property within the county sewer district found to be benefited in accordance with the special benefits conferred, less any part of the cost that is paid by the county at large from other available funds. State land so benefited shall bear its portion of the assessed cost.”

This section has been interpreted on a number of occasions by courts, especially as to what it means for a property “to be benefited in accordance with the special benefits conferred” clause. In addition, courts have often used special benefit provisions as interpreted for other special assessment proceedings and for other types of improvements, both inside and outside of Ohio, in reaching conclusions on exactly what it means to confer special benefits.

One legal principle of defining special benefits to land is that “a special benefit to land may consist of either a present increase in its value, or a future or potential benefit . . .” and that the determination is a question of the particular fact situation (*D’Antuono v. City of Springfield*, 114 Ohio App. 102, 106). Further, another court, in finding that an assessment was void, declared the assessment void “. . . in that it substantially and materially exceeded the special benefits it conferred upon the land” (*Kangesser Foundation v. City of Euclid*, 159 N. E. 2d 919).

Another legal issue with special assessments deals with whether different classes of users can be assessed differently. Here one court ruled that the phrase in the statute requiring the assessment of “all the property within a county sewer district to be benefitted” did not require uniform assessments, and “implies that different classes of property may exist within the sewer district and therefore different benefits may result”. (*Board of County Commissioners of Fairfield County v. Hessler, et al*, 5<sup>th</sup> District Court of Appeals Case # 2007CA00028, decided 6-30-08).

Finally, in cases appealed from the probate court, dealing with an action to enjoin an improvement, higher courts have generally deferred to the trial court’s decision unless the trial court decision is characterized by “a clear abuse of discretion”.

For additional information refer to the following additional cases dealing with county special assessment projects:

- *Drillex, Inc. v. Lake County Board of Commissioners*. 159 Ohio App 3d 384.
- *Prechnicki v. McCormack, et al.*, 8<sup>th</sup> District Court of Appeals Case No. 73579, decided 7-30-98.
- *Haymes et al. v. Holzmer*, 3 Ohio App. 3d 377, 6<sup>th</sup> District Court of Appeals Case No. L-80-400, decided 10-9-81.

## **28.50 WATER IMPROVEMENTS WHERE SPECIAL ASSESSMENTS WILL BE LEVIED AND COLLECTED**

If the proposed water project will levy and collect special assessments on property in the sewer district a much more rigorous and time consuming process must be followed for the water project. There are over 30 steps that need to be followed when using the special assessment procedures contained in ORC Chapter 6103 and 6117. These procedures are detailed at the end of this Chapter in Exhibit 5.

### **28.501 DISCUSSION OF CERTAIN NOTICES TO COUNTY AUDITOR**

ORC Section 319.61 is a statute of general application to all political subdivisions that are authorized to make public improvements involving the levy of special assessments. Under this statute two types of notices must be given to the county auditor as follows:

1. A notice of intention to proceed with the public improvement.
2. A notice of the levy of special assessment or charges.

In Exhibit 5 at the end of this Chapter we have included both of these notices in the outline of the assessment procedure recommended. The “notice of intention to proceed” is the equivalent of the improvement resolution referenced in ORC Chapter 6103 and must be certified to the county auditor within 15 days of its adoption. In the case of the “notice of the levy of special assessments”, this resolution must be certified within 20 days after its adoption.

It should be noted that Division B(4) of this section defines “special assessments and charges” to mean “special assessments or charges excluding charges for utility services.” While some maintain this would exclude water, sewer, and other utilities from the notice requirement, only utility charges, not special assessments are exempt from the notice requirement.

The county auditor records these special assessments in a special assessment record that must be maintained in the auditor’s office. This filing is important because of the order of the lien that attaches with the assessment. In most cases the lien for special assessments takes priority over other liens with the exception of mortgage liens as further detailed in ORC Section 319.61.

### **28.51 LIMITATIONS ON THE RIGHT TO APPEAL WATER IMPROVEMENTS TO THE PROBATE COURT**

While the previous section generally discussed appeals relating to assessment projects, this section will go into more detail and discuss various issues when appeals are perfected by property owners. First, it should be noted that appeals for water improvements are subject to the appeal procedures for sewer and drainage improvements as specified in ORC Sections 6117.09-6117.24 (ORC 6103.07).

A property owner is required to give notice of intent to appeal and the basis for the appeal prior to the adoption of the improvement resolution. If such a notice of intent to appeal is not given, an appeal may not be taken later (*Gallman v. Board of County Commissioners of Mercer County*. 159 Ohio St. 253).

While some maintain that this notice is only required for projects involving two or more counties, this is not the case. In addition to the above cited case, the Eleventh District Court of Appeals, in the case *Blair v. Board of County Commissioners of Geauga County, et. al.* (Case No. 95-G-1960, decided 6-14-96) determined that the courts in interpreting ORC Sections 6117.09 and 6117.10 “have held that the section only set forth one procedure for bringing this type of administrative appeal.”

Basing its ruling on *Gallman*, the Third Appellate District Court in a case originating in Allen county in 1985 held that “in every appeal from an improvement determination, the appellant is required to file both a notice of the intent to appeal and a notice to appeal. The appellate court reached this holding even though the reference to the notice of intent to appeal was contained in R.C. 6117.10, not R.C. 6117.09.”

What causes some of the confusion and misunderstanding on this issue is the fact that the section heading in some versions of the Ohio Revised Code that precede the actual language in ORC 6117.10 reads “Appeal when improvement is located in two or more counties.” Yet, ORC Section 1.01 specifies that “. . . section headings . . . do not constitute any part of the law as contained in the ‘Revised Code’.” And while the first paragraph of this section specifies that when a project is located in two or more counties that an appeal is filed in the county where the property is located, the remainder of ORC Section 6117.10 also applies to projects in one county as well as to projects in two or more counties.

There are three reasons that a property owner may appeal as detailed in Exhibit 5, step #15. If such notice is given then the commissioners must set a reasonable amount of a bond to pay for costs associated with the appeal if the property owner does not prevail. Then appeals must be perfected in the probate court within 10 days after the adoption of the improvement resolution.

In certain cases the ability to appeal is limited. If the Director of Ohio EPA has ordered the improvement as necessary for the public health and welfare pursuant to ORC Section 6103.17, no appeal may be taken to the probate court as it relates to the necessity of the improvement, however, an appeal may be taken on the other two statutory bases for appeal.

Likewise, no appeal may be taken on the basis of (1) the necessity of the improvement or (2) the boundaries of the assessment district if owners of property that will be assessed for at least 85% of the cost of the improvement have provided written consent to the decision by the commissioners to proceed to adopt the improvement resolution (ORC 6117.09). If an appeal has been perfected in the probate court on the basis of these two reasons and the county later receives written consent from property owners who will be

assessed for at least 85% of the cost of the improvement the county can then file a motion in court to dismiss the appeal. It should be noted that this does not limit the ability for a property owner to appeal on the basis of the third reason for which an appeal may be perfected—on the basis of the apportionment of the tentative assessment.

## **28.52 PROCEDURAL PROVISIONS RELATING TO APPEALS OF WATER IMPROVEMENTS**

If an appeal is filed, the county must then file with the probate court the original papers in the improvement proceedings along with a transcript of the proceedings from the commissioners' journal certified by the clerk. These items must be filed with the court within 10 days of the property owner filing of the required bond with the county auditor. The probate court then docket the case. After this initial step, following are the general procedural steps in the appellate process:

1. After the case is docketed, the court selects a date for a hearing on all preliminary questions in the appeal and for the examination of papers and commissioners' proceedings as submitted by the clerk. This is to occur within five days after the case is docketed (ORC 6117.13).
2. At the preliminary hearing the court hears and rules on preliminary motions and questions arising under the appeal. If the court finds that the proceedings are irregular, or the appeal was not perfected properly, the court dismisses the appeal and taxes costs on the appealing property owners (ORC 6117.14).
3. If the appeal is not dismissed the court sets a date for a trial within 20 days after the preliminary hearing.
4. The court then publishes in a newspaper of general circulation a notice of the appeal including the time and place of the trial. This notice must be published twice. The first publication must be printed at least 15 days before the trial; the second at least eight days before the trial.

If more than one property owner appeals the cases are consolidated, but the court considers the facts that surround each appeal separately (ORC 6117.16).

## **28.53 DECISION BY THE PROBATE COURT**

At the end of the trial the court must find separately on each claim to adjust the tentative assessment assigned to each property owner. Depending on the basis of the appeals the court also needs to find:

1. Whether the improvement is necessary for the public health, convenience, welfare; or
2. Whether the cost of the improvement will exceed the benefit to the district; or

3. Whether the boundaries of the assessment district should be changed.

If the probate court finds that the cost of the improvement exceeds the benefit, it declares the improvement not necessary for the public health, convenience, or welfare and then the commissioners must abandon the improvement (ORC 6117.17, 6117.19).

When appeals pertain to the boundaries of the assessment district or the apportionment of the tentative assessment and the court determines that the boundaries of the assessment district or the tentative assessment should be changed, commissioners may make the changes and proceed with the improvement as modified as long as the court has not found that the improvement is not necessary or the cost of the improvement exceeds the benefits (ORC 6117.20). However, no property can be added to the assessment district unless the new owners have been notified by the court and have had the opportunity to be heard in court (ORC 6117.17).

While the general rule is that costs of the appeal are paid by the losing party, the probate court has considerable discretion on how to allocate costs among the parties to the appeal. See ORC 6117.18 for more information.

#### **28.54 AUTHORITY OF COURTS IN WATER PROCEEDINGS**

Ohio law provides some guidance to all courts that may be involved in court proceedings concerning a water project. This guidance applies to appeals pursuant to ORC Section 6117.09 and also court actions to enjoin, reverse, or declare void the water improvement proceedings or to enjoin the collection of a tax or assessment. If the court finds a “manifest error” in the proceedings affecting the rights of a property owner the court may set aside the proceedings relating to the appealing property owner without affecting other parties that have not appealed.

Any court may accept parol testimony that the improvement will be conducive to the public health, convenience, and welfare and that any steps required by law have been “substantially complied with” even if there were errors or defects in records relating to the improvement, and may correct any “gross injustice” in assessments levied. Any court may, on final hearing, make such orders as the court deems equitable including ordering any assessment to stand for collection, that it be levied in whole or in part, or may perpetually enjoin the assessment or any part of it. Also, in the case where the assessment has already been paid under protest, the court may order all or a part of it to be refunded (ORC 6117.24).

#### **28.55 APPEALS FROM THE PROBATE COURT**

Parties may appeal a decision of the probate court to the court of appeals and then to the Supreme Court. If the appeal is on the necessity of the improvement, the construction is delayed until all appeals have been exhausted. If, on the other hand, the appeal is on the basis or the nature of the assessment district or the apportionment of the tentative assessments, commissioners may proceed with the improvement as directed by the

probate court in its ruling. When a higher court later rules on the other issues the county makes adjustments to conform to the final ruling of the court of appeals or the Supreme Court (ORC 6117.23).

## **28.56 ANNUAL CERTIFICATION OF ASSESSMENTS**

Assessments must be certified annually to the county auditor not later than the second Monday of September (ORC 6103.16). This includes assessments deferred pursuant to ORC Section 6103.051. The certification to the auditor must show both the assessments to be collected and those deferred. It must show the amount and time of collection for each assessment. The county auditor records all assessments in the water works record.

The assessments bear interest if bonds were issued or another type of loan was used to finance the improvement. The assessment constitutes a lien on the property and is paid with property taxes either annually or semiannually for a period of not more than 20 years. Assessments of \$5 or less are payable at the next payment of taxes. Assessments on the tax bill, if not paid when due, are subject to the same penalties and interest payments as for real property taxes.

For those assessments that have been deferred, the commissioners must review them each August. If it is determined that the circumstances have changed since the original deferment and the assessment is no longer inequitable, the assessment can be certified for collection. This certification of a previously deferred assessment must also be made by the second Monday of September. The payment of previously deferred assessments must be collected so as to correspond with the other assessments for which bonds have been issued, but in not less than 5 years. Also, the payment cannot be required before non-deferred assessments are due.

After assessments have been deferred for 20 years, however, they must be certified for collection unless the land is located in an agricultural district. In this case the period of collection is not more than 20 nor less than five years provided that assessments need not be made earlier than the last payment of non-deferred assessments.

## **28.57 ASSESSMENTS IN AGRICULTURAL DISTRICTS**

Counties are prohibited from collecting water assessments on property located within an agricultural district without the permission of the owner as long as the owner established the agricultural district prior to the adoption of the resolution of necessity. An assessment may, however, be made on a lot surrounding a dwelling or other structure that is not used in agricultural production of not more than one acre or the minimum area required by local zoning or subdivision regulations if larger than one acre (ORC 929.03).

Notice to persons who could potentially establish an agricultural district must be given prior to the adoption of the resolution of necessity as detailed in Exhibit 5. For more information concerning agricultural districts see Chapter 93 of this *Handbook*.

## **28.58 DEFERRED ASSESSMENTS WHEN CONSTRUCTING MAIN WATER LINES TO AID IN DEVELOPMENT**

In addition to the general authority to defer assessments as authorized by ORC Section 6103.051, commissioners also may defer assessments for a main water line to aid in the establishment of new or expanded industrial plants, other industrial development, commercial, or residential development across agricultural land (ORC 6103.052).

This statutory provision was used in a number of past situations when the Ohio Water and Sewer (Rotary) Commission was in existence. This Commission provided 20 year interest free loans to extend main water lines to encourage development by deferring assessments when the main line was predominately crossing agricultural land. This state program was used in a number of cases prior to the enactment of the agricultural districts law, which included provisions prohibiting the collection of assessments.

The Commission, which was administratively attached to the Ohio Department of Development, was abolished in 2013 with the enactment of legislation creating the new Ohio Development Services Agency. With the repeal of this interest free loan program this deferment statute no longer has much practical applicability. It does now apply primarily as a law to protect agricultural land owners located in agricultural districts whose assessments were deferred in the past and now must be collected because of the maximum 20 year deferment and loan provision. When this deferred assessment becomes due it cannot be collected because land may have been subsequently placed in an agricultural district which prohibits the collection of the assessment.

Assessments deferred prior to January 1, 1987, which were often limited to a maximum of 20 years, must be extended if the property owner makes a written request at least six months before the expiration of the original deferment and the land still qualifies for placement in an agricultural district. The property owner may also request that the deferred assessment be paid in installments instead of at the end of the 20 year deferment period. The request for installments must also be made at least six months before the expiration of the deferment and installments may be for up to an additional 20 years.

The law also requires the county to send notice by regular or certified mail to property owners who have been granted these types of deferred assessments at least 210 days before the expiration of the deferred assessment.

Nonetheless, in order to qualify for this type of deferment today the land must be listed on the tax duplicate as agricultural land. The request for deferment must be made during the five day period during when objections to a sewer improvement can be made. The county may defer such assessments and attribute the amount of the assessment to tap in charges.

A request for this type of deferment must identify the property; describe its present use and present classification for tax purposes; state the estimated market value of the land;

must state why the benefit to the land will not be realized until the use of the land changes; and, must include the amount requested to be deferred. If commissioners defer the assessments they certify the deferred assessments to the county auditor along with those that are to be collected for the improvement. A fee of two percent is added to these deferred assessments. During the time of deferment a lien is placed on the property until the assessment is paid.

If these types of deferments are granted, commissioners must regularly review the use and ownership of the land. If it is found that the land would no longer qualify for designation as an agricultural district, and the land is no longer classified as agricultural on the tax duplicate, prior to the end of the deferment period, the full amount of the deferred assessment, without interest, is collected.

### **28.59 ASSESSMENTS FOR PLANS AND PRELIMINARY ENGINEERING PURPOSES**

While most assessments are for the construction of improvements, counties may also levy assessments for the following purposes:

1. For a general or revised general plan of water supply of the district.
2. For detailed plans, specifications, estimate of costs, and tentative assessments for water supply improvements.
3. For costs to prepare a financing plan, for actual financing, and for legal services.

These assessments are often referred to as preliminary engineering assessments and they must be apportioned according to benefits or tax valuation, or by a combination of these methods. The assessments may be for up to 20 years. Their use should be considered if the county is not confident of the support for the improvements or of the property owners' ability and willingness to pay the local costs of the improvements. In this manner, the county commissioners require the area property owners to make a commitment to pay the costs of preparing the plans and cost estimates for the project even if they later decide not to proceed with construction. Otherwise, these costs must be paid from existing sewer district funds or the general fund (ORC 6103.081). Some counties also utilize this section when planning and design costs are substantial regardless of whether the county believes the project will proceed. This is often referred to as a Detailed Planning Assessment (DPA).

In order to levy preliminary engineering assessments commissioners must first adopt a resolution that includes the following:

1. A statement that it is necessary to provide water supply improvements in a sewer district and to maintain and operate them.
2. A description of the type of improvement the county anticipates will be constructed.



3. A statement that funds are needed to pay the preliminary costs of the improvements that will be incurred prior to the time they will initiate proceedings for the construction of the improvements.

Before adopting this resolution commissioners must give public notice of the proposed resolution to determine the necessity of the improvements. The notice must include a description of the properties to be benefited by the improvements and include the time and place of the hearing. It must be published in a newspaper of general circulation in the county once a week for two consecutive weeks or by publication as provided in ORC Section 7.16. Notice can also be given by mailing a copy of the notice by first class or certified mail to the owners of the properties proposed to be assessed, or by a combination of these methods. The first publication or mailing must occur at least two weeks before the hearing.

At the hearing commissioners hear all persons whose properties are proposed to be assessed and the evidence it considers necessary. Commissioners then determine the necessity of the proposed improvements and direct the sanitary engineer to prepare tentative assessments.

Before adopting the resolution levying the assessments the law requires another notice to property owners. Commissioners must give notice either by one publication in a newspaper of general circulation in the county, or by mailing a copy of the notice by first class or certified mail to the property owners. The notice must be provided at least 10 days before the meeting where the commissioners will consider the assessment resolution and must include the time and place of the meeting.

At the hearing where assessments will be levied the commissioners hear all whose properties are going to be assessed, must correct any errors found, and may make such revisions that seem just. The commissioners then adopt the resolution levying the assessments on benefited properties. These assessments must be certified to the county auditor for collection.

No further action can be taken or work done for 10 days after the adoption of the resolution making the preliminary engineering assessments. If no appeal is taken during this 10 day period the action of the commissioners is final. If an appeal has been taken to the probate court no further action can be taken and no further work can be done on the improvement until the appeal is resolved. The board may issue debt for up to 20 years for preliminary engineering assessments.

## **28.60 MAINTENANCE ASSESSMENTS**

Counties may also assess property for maintenance and operation of water improvements after construction. The assessment may be for the maintenance, repair and operation of the improvement. No notice is required for these assessments unless the amount of the assessment exceeds 10% of the original cost of project construction. If the cost exceeds 10% then the procedure required for the original assessment must be repeated (ORC 6103.15)

## **28.61 PROPERTY TAX AND DEBT AUTHORITY FOR WATER FACILITIES**

In the case of construction of water improvements, ORC Section 6103.14 gives authority for commissioners to “levy taxes in addition to all other taxes authorized by law” to pay for the sanitary engineer and his assistants and for paying for “that part of the cost of the improvement to be paid by the county or of the interest to accrue thereon . . .”. It should be noted that this authority is limited to situations where the county is paying all or part of the improvement with county funds.

This provision also provides that such a levy is subject to limitations in the law concerning the “aggregate amount, rate, maximum rate, and combined maximum rate of taxation, but it and other sections of ORC Chapter 6103 make it clear that the county may pay all or any part of water improvements with general fund or other monies, although this almost never happens. For example ORC Section 6103.13 dealing with special assessments specifically refers to “any part of the cost that is paid by the county at large from other available funds”.

ORC Section 6103.08 also authorizes commissioners to issue bonds and notes in anticipation of the issuance of bonds under the provisions of ORC Chapter 133. These bonds and notes may be issued for the entire improvement, or in anticipation of the collection of deferred assessments. If a separate issue is in anticipation of the collection of deferred assessments, the first payment of principal on the bonds cannot be later than five years after issuance.

In addition to the above statutes in ORC Chapter 6103, and more commonly used by counties, is the authority to issue revenue debt. ORC Sections 133.07(C)(2)(a) and 133.08(B)(1) allow revenue debt to be issued for water systems or facilities.

## **28.62 CONTRACTS WITH TOWNSHIPS FOR WATER IMPROVEMENTS**

Counties may enter into contracts with townships to have the township pay all or part of the cost of constructing, maintaining, repairing, or operating any water supply improvement which provides water to the township. The power does not restrict the power of commissioners to levy special assessments or limit rates charged for water (ORC 6103.031).

## **28.63 ESTABLISHMENT OF WATER RATES AND CHARGES**

Commissioners must establish reasonable rates or user charges for water supplied by the county and may change the water rates when it determines changes are necessary (ORC 6103.02(F)). It should be noted that, unlike county sewer rates, rates cannot be charged to those who have the “availability to use” or who are “capable of being served” as is the case for county sewer rates.

If the water is not owned by the county but is purchased by contract, the schedule of rates to be charged must be approved by the commissioners at the time it enters into the water

supply contract. If the county is providing payments to a school district under the provisions of ORC Section 6103.25, the payments may be included as a cost element of water rates. These payments may be voluntarily made to school districts if the county obtains property for water supply purposes which was taxable to reimburse the school district for the tax loss of obtaining property for water supply purposes.

In addition, the commissioners need to establish the following rates and charges for county water service:

1. Penalties for late payments. It should be noted that courts have determined that the rules cannot provide for interest payments as a form of penalty (*Yoder, Holmes Co. Treasurer v. Morilo, Inc., et al.*, 119 Ohio App. 3d 257).
2. The amounts to be paid as a security deposit prior to obtaining water service.
3. Connection or tap-in charges. Tap-in charges must be paid before a person connects to a county water line. There are two options for the payment of tap-in fees. First, a lump sum payment for the full amount of the tap-in fee may be required before the property connects. Second, the tap-in charge can be made in installments if the commissioners' rules so allow. If commissioners allow for installments, the rules must provide for the time when installments are due, the amount of the installments, the amount and type of security, carrying charges, and penalties for late or non-payments.

In addition, if installments are used, commissioners must certify to the county auditor the amount of the installment payment for each parcel, the total amount of installments for each parcel, and the number of installments required to be made. The auditor records these certifications in the water works record. These tap-in charges then may be billed with the water rates or user charges mentioned above.

Counties are required to read water meters and provide an actual water bill at least quarterly. An estimated bill may be provided periodically and as a substitute for a regular quarterly reading if the meter is not accessible or cannot be read for other reasons (ORC 6103.02). Counties are also required to establish fair and reasonable procedures to resolve billing disputes, and must accept partial payments of unpaid bills of \$10 or more prior to certifying an unpaid bill to the county auditor for collection on the property tax bill.

Finally, if property is about to be sold a request for a final meter reading and water bill can be made by the owner or a realtor. Such a request must be made at least 14 days before the transfer of the property and the county has 10 days from the date of the request to provide a final bill.

## **28.64 DISCOUNTED OR REDUCED RATES AND CHARGES FOR SENIOR CITIZENS**

When establishing or modifying rates and charges commissioners may establish discounted rates and charges for persons 65 or older. When establishing discounted rates, commissioners must establish eligibility requirements for the discounted or reduced

rates. This may include that a person is eligible for the homestead exemption property tax credit or is a low-and-moderate-income person (ORC 6103.02(F)).

### **28.65 COLLECTION OF RATES AND CHARGES**

Counties may provide for the collection of rates and charges themselves or they may contract with a financial institution to perform this service for the county. Commissioners, however, can only execute such a contact if requested by the county treasurer and the contact must be competitively bid if the amount exceeds the dollar bidding threshold. Under this type of contract the financial institution will receive water bill payments at a post office box, process the payments, and deposit them into the county treasurer's account. The institution also must provide the treasurer with daily receipt information (ORC 321.03).

### **28.66 COLLECTION OF DELINQUENT WATER RATES AND CHARGES**

If water rates, charges, and tap-in fees paid in installments on the water bill are not paid when due, the county has a number of options to collect the delinquent bill as follows:

1. Certify the unpaid rates, charges, tap-in fees, and penalties to the county auditor for placement on the tax duplicate for collection. When placed on the tax duplicate the charges constitute a lien on the property (ORC 6103.02(G)(1)). It should be noted, however, that the lien attaches to the property only after the delinquent charges have been both certified and placed upon the tax duplicate by the county auditor. In cases where a transfer of property takes place prior to a lien attaching to the property, the new owner has no obligation to make the payment (OAG 81-030).

If the unpaid charges are placed on the tax duplicate the county treasurer is required to accept a partial payment equal to the full amount of the unpaid bill separate from payment of any unpaid taxes. When the payment of the full amount of the bill is made, the lien is released.

2. Take legal action against the party responsible for non-payment of the rates and charges.
3. Terminate water service under rules established by the commissioners.
4. Use any security deposit to pay for any of the unpaid rates and charges as specified in rules established by the commissioners.

### **28.67 WATER IMPROVEMENTS BY PETITION OF ALL PROPERTY OWNERS TO COUNTY COMMISSIONERS**

While it is most common for commissioners to initiate water improvements, Ohio law does allow petitions to be submitted to the commissioners by property owners who desire

water improvements. A petition must, however be signed by all property owners desiring the improvement. The petition, addressed to the commissioners, must request the county to acquire or construct and operate and maintain the improvement; describe the improvement and the lots and lands owned by the petitioners to be assessed to pay the cost of acquisition or construction, maintenance, and operation of the improvement; consent that the property owned by the petitioners may be assessed to pay the cost of the improvement and of its maintenance and operation; and, waive the right to receive all legal notices otherwise required by law.

The commissioners then direct the county sanitary engineer to prepare the necessary plans, specifications and estimate of cost for the construction, operation and maintenance costs for the improvement along with a tentative assessment. The project can be expedited in the case of a petition project under certain circumstances. In order to expedite the project the property owners who petitioned for the improvement must state, in writing, that they have examined the estimated cost and tentative assessment and have no objections to either.

Another condition for an expedited project is for property owners to state, in writing, that they agree to waive their option to prepay their assessment in cash if bonds are to be used to finance the improvement prior to construction or acquisition. If these written statements are received from all petitioners the project is exempt from any of the notices that the law would normally require and also there will be no opportunity for the property owners to file objections to the improvement.

As is the case in non-petition improvements the tentative assessment is for the information of property owners and is not certified to the county auditor for collection. When the project is complete and the final cost is determined the county sanitary engineer prepares a revised assessment based on the actual cost. This actual cost is confirmed by resolution of the commissioners and then is certified to the county auditor for collection (ORC 6103.11). This must be done by the second Monday in August for placement on the next tax duplicate (6103.16).

Finally, in the case of an improvement initiated by petition there is no right to appeal to the probate court unless the commissioners refuse to proceed with the improvement. In the case of a rejection of the petition, or failure to approve the improvement, commissioners must receive notice of intent from the property owner that an appeal will be perfected and the property owner must also file the bond required under normal assessment procedures with the county auditor (ORC 6117.11).

## **28.68 CONTRACTUAL WATER SERVICES UPON APPLICATION FROM A PERSON OR PUBLIC AGENCY**

In the case of properties located outside of any county sewer district or sub-district any person or public agency may apply for the provision of water services to the properties of the person or public agency. Such an application can be submitted by owners outside of the county as well as those within the county. If such application is made

commissioners may acquire or construct facilities on terms the commissioners determine to be equitable.

The amount paid cannot be less than the original or comparable assessment for similar property located within the sewer district, or if there is no basis for comparison, the amount the commissioners feel are “reasonable and fairly reflective of that portion of the costs” attributable to the properties to be served in the application (ORC 6103.20)). These payments may be made in a lump sum, in installments as a part of tap-in fees, or by special assessments. If special assessments are used commissioners must follow the procedure required for assessment projects as detailed in Exhibit 5. Commissioners can only levy assessments on properties located within the county (ORC 6117.20(A)). It appears that this authority is rather dated and rarely used.

## **28.69 PRIVATE CONSTRUCTION OF WATER LINES**

County commissioners may also permit private individuals or organizations to construct water lines under county supervision in the unincorporated areas of the county (ORC 307.73). Prior to allowing such construction, the county should adopt sound construction standards to assure acceptance of a quality system.

The resolution authorizing the construction must provide for the collection of a share of the total cost from property owners tapping into the line in the future. When this share is collected, it is then used to reimburse the individual or organization that originally constructed the line. The cost is to be based on front footage and cannot be greater than it would have been if the individual or organization had originally participated in the improvement. In addition, a connection fee can be established. The resolution must be filed with the county auditor.

The commissioners resolution implements this legal authority, but the resolution also generally provides for the execution of a Recoupment Agreement with the private individual or organization outlining the terms and conditions of the recoupment including the term of the agreement. The private individual or organization must request recoupment prior to the construction of the improvements.

## **28.70 EPA ORDERED IMPROVEMENTS/FINDINGS AND ORDERS**

A board of health, municipality, or board of township trustees may file a written complaint with OEPA that unsafe water supply conditions exist in the county. If OEPA determines that it is necessary for the public health and welfare that water supply facilities must be provided in the unincorporated area of the county, OEPA makes this finding and orders the commissioners to take “corrective action” which usually results in the construction of improvements (ORC 6103.17). If commissioners fail to comply with the OEPA order the Attorney General can seek a writ of mandamus in court (ORC 6103.19).

## **28.71 MULTI-YEAR SERVICE CONTRACTS FOR WATER STORAGE TANKS**

Commissioners have the authority to enter into multi-year asset management professional service contracts for the engineering, repair, sustainability, water quality management, and maintenance of a water storage tank and appurtenant facilities (ORC 9.29, 6103.101). Such a contract is not subject to competitive bidding and may be awarded by direct negotiation or through the solicitation of requests for proposals or qualifications.

Such a contract must include the following provisions:

1. Provide that the county is not required to make total payments in a single year that exceed the excess of “. . .(a) the political subdivision's water utility charges over (b) the operating expenses of the water system payable from such charges and the principal, interest, and other debt charges, including reserves and coverage requirements, for outstanding debt due in that year.”
2. Require the work be performed under the supervision of a licensed professional engineer who certifies that the work will be performed in compliance with all applicable codes and engineering standards.
3. Provide that if the water tank requires engineering, repair, sustainability, water quality management, or service in order to bring the tank into compliance with environmental or other laws that the contractor must provide the service. The cost of the work must be itemized separately and may be charged to the county over a period of not less than three years.

The cost of the work is paid after provision is made to pay operating expenses and the principal, interest, and other debt service charges, including reserves and coverage requirements for outstanding debt due during the year.

## **28.72 SALE OR DISPOSITION OF COUNTY OWNED WATER FACILITIES**

Commissioners may sell or otherwise dispose of water supply facilities to another public agency or person if they determine such action is in the best interest of the county and those served by the water supply system.

To effectuate a sale a resolution must be adopted stating the reasons for the sale and establish any terms and conditions of the sale. These terms and conditions may include such items as a minimum sale price, a schedule of rates and charges that will be initially paid for services, and other terms and conditions specified in the resolution.

The resolution must also specify a time and place for a hearing of objections to the sale. Notice that the resolution has been adopted and the time and place of the hearing must be published in a newspaper of general circulation, or as required by ORC Section 7.16, or once a week for two consecutive weeks. The public hearing cannot be held until at least 24 days after the first publication. In addition, a copy of the notice must be sent by

first class or certified mail before the date of the second publication, to any public agency within the area served by water facilities.

After the public hearing no action can be taken for five days, during which written objections to the sale can be filed by residents or public agencies. Commissioners must consider the objections and then determine whether to proceed with the sale

If the decision is to sell, commissioners must then receive bids after advertising once a week for four consecutive weeks, or as provided in ORC Section 7.16, in a newspaper of general circulation in the county. Commissioners then may award the sale to a responsible bidder whose proposal is considered to be in the best interests of the county and of the users of the system. Commissioners may reject all bids. If the sale or disposition of water facilities is to a municipality under ORC Section 6103.04(B) then these procedures do not have to be followed.

### **28.73 PURCHASE OF WATER FACILITIES**

Commissioners also have authority to purchase water facilities owned by any person or public agency to provide water service within a county sewer district. Prior to making such a purchase the county sanitary engineer must certify that the facilities are properly designed and constructed. Prior to purchase, commissioners must consult with the sanitary engineer to determine a reasonable price for the facilities. This sale may be finalized through a negotiation process. To pay for the acquisition commissioners may issue debt and use special assessments against benefited properties for all or part of the purchase. If assessments are used, regular assessment procedures must be followed as if the project was being constructed (ORC 6103.20(B)).

## **PART 4**

### **DRAINAGE AND STORM WATER PREVENTION & REPLACEMENT FACILITY IMPROVEMENTS**

#### **28.74 PREPARATION OF GENERAL PLAN OF DRAINAGE**

After the establishment of a sewer district, or a drainage sub-district, and the delineation of its boundaries and prior to undertaking any drainage or storm water prevention and replacement facility improvement a general plan of drainage must be prepared for the district (ORC 6117.06). The general plan takes into account existing drainage or prevention and replacement facilities and prospective needs for additional facilities.

This general plan is submitted to the commissioners for approval. When a resolution is adopted approving the plan, a copy is sent to Ohio EPA for approval, if EPA has requested the general plan be prepared to address water quality violations. After approval of the general plan by the commissioners and by Ohio EPA, if required, a resolution may be adopted which generally describes the improvement that will be constructed or acquired, declaring that the improvement is necessary for the preservation



and promotion of the public health and welfare, and specifies whether special assessments will be used to pay for any part of the improvement.

## **28.75 STATUTORY DEFINITIONS RELATING TO DRAINAGE AND PREVENTION AND REPLACEMENT IMPROVEMENTS**

ORC Section 6117.01(A) includes a series of definitions that are important to understand for the purposes of this part of this Chapter of the *Handbook*. This section defines such terms as current operating expenses, construction, and maintenance. In addition the following definitions are especially important as it relates to drainage and storm water prevention and replacement facility improvements:

"Drainage" or "waters" means flows from rainfall or otherwise produced by, or resulting from, the elements, storm water discharges and releases or migrations of waters from properties, accumulations, flows, and overflows of water, including accelerated flows and runoffs, flooding and threats of flooding of properties and structures, and other surface and subsurface drainage.

"Drainage facilities" means storm sewers, force mains, pumping stations, and facilities for the treatment, disposal, impoundment, retention, control, or storage of waters; improvements of or for any channel, ditch, drain, floodway, or watercourse, including location, construction, reconstruction, reconditioning, widening, deepening, cleaning, removal of obstructions, straightening, boxing, culverting, tiling, filling, walling, arching, or change in course, location, or terminus; improvements of or for a river, creek, or run, including reinforcement of banks, enclosing, deepening, widening, straightening, removal of obstructions, or change in course, location, or terminus; facilities for the protection of lands from the overflow of water, including a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, retention or holding basin, control gate, or breakwater; facilities for controlled drainage, regulation of stream flow, and protection of an outlet; the vacation of a ditch or drain; equipment and furnishings; and all required appurtenances and necessary real estate and interests in real estate.

"Prevention or replacement facilities" means vegetated swales or median strips, permeable pavement, trees and tree boxes, rain barrels and cisterns, rain gardens and filtration planters, vegetated roofs, wetlands, riparian buffers, and practices and structures that use or mimic natural processes to filter or reuse storm water.

"Combined sewer" means a sewer system that is designed to collect and convey sewage, including domestic, commercial, and industrial wastewater, and storm water through a single-pipe system to a treatment works or combined sewer overflow outfall approved by the director of environmental protection.

As it relates to combined sewers, and in addition to the general rule-making authority explained in Part 1 of this Chapter, ORC Section 6117.012 also gives specific authority to adopt rules relating to storm water inflows and combined sewers. See Section 28.37 of this Chapter for additional information.

## **28.76 ACQUISITION OF PROPERTY AND EMINENT DOMAIN**

Commissioners have the right to acquire real property, any interest in real property, or an option to acquire real property needed for the acquisition, construction, maintenance,

or operation of drainage and storm water prevention and replacement facility improvements within or outside of a district. They may purchase the real estate, interest in real estate, or right by negotiation.

If the commissioners and the owner cannot agree to a purchase price, or to the amount of damages to be awarded, commissioners have the authority to acquire the property by eminent domain pursuant to ORC Sections 163.01-163.22, the regular process used to acquire property by eminent domain. Commissioners, however, may not use eminent domain to acquire real or personal property owned by any municipality (ORC 6117.39(A)).

In certain circumstances commissioners may be able utilize what is popularly referred to as “quick-take” eminent domain procedures in the case of a statutorily defined “public exigency” as is described in detail in Section 28.19 of this Chapter dealing with sanitary sewers. Quick-take can generally only be used in cases of a “public exigency” and can be used for sewer and certain road projects, but not for water facilities.

In the case of drainage and storm water prevention and replacement facilities it is possible to use quick take, but only in very limited circumstances, and when it involves “an improvement required as a result of a federally or state-imposed consent decree that prohibits future sewer inflows, combined sewer overflows, or sewer back-ups.” It is important to consult with the county prosecutor about how quick take authority applies to drainage and prevention and replacement facilities when the county has entered into a consent decree relating to sewer overflows.

In quick-take actions, the county can take possession of condemned property before compensation litigation with owners is complete if they deposit “probable compensation” with the court. Under quick-take proceedings commissioners must adopt a resolution finding that it is necessary for the protection of the public health and welfare to appropriate the property. The resolution must also contain a detailed description of the property and the name and place of residence of the property owner. The resolution must include a dollar amount for the value of the property. This value must be supported by an independent appraisal and also include any damages to the residual property.

This amount of value along with any amount for damages to the residual property must be deposited with the common pleas court when the eminent domain petition is filed along with a copy of the resolution and a copy of the independent appraisal (ORC 6117.39(B)).

## **28.77 DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITY IMPROVEMENTS WHERE SPECIAL ASSESSMENTS WILL NOT BE LEVIED AND COLLECTED**

If the proposed improvement will not use special assessments for any part of the project, Ohio law provides for a more expedited process than in cases where special

assessments are utilized. In this case the resolution noted above may authorize the improvement and expenditure of funds for the acquisition or construction of the improvement without following certain statutory requirements that must be followed for assessment projects.

Specifically, non-assessment projects are exempt from the provisions of ORC Sections 6117.06(C), (D), and (E), and 6117.07 to 6117.24. If commissioners choose not to authorize the improvement at this time, they may do so later in another resolution or may do so in a resolution authorizing the issuance of debt to pay for the improvement.

In a similar vein, ORC Section 133.15(A) provides that, when debt is issued for improvements where special assessments will not be levied, commissioners can authorize the improvement and expenditure of debt proceeds and other monies appropriated without going through the procedures generally required of assessment projects.

Finally, most of the procedures required for assessment projects can be eliminated if the commissioners levy a tax or proceed to issue debt pursuant to ORC Section 6117.311, as will be explained later in this Chapter.

## **28.78 SPECIAL ASSESSMENTS FOR DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT IMPROVEMENTS MUST CONFER SPECIAL BENEFITS TO PROPERTY OWNERS**

Perhaps one of the shortest sections of ORC Chapter 6117 is one of the more critical to understand. ORC Section 6117.30 is the basic enabling authority for commissioners to use special assessments when making drainage and storm water prevention and replacement facility improvements. It is essentially the same language that applies to sewer facilities in the same section and to water supply facilities in in ORC Section 6117.13. This section reads as follows:

“The cost of the acquisition or construction of . . . drainage facilities or prevention and replacement facilities to be paid by assessments shall be assessed, as an assessment district assessment, upon all the property within the county sewer district found to be benefited in accordance with the special benefits conferred, less any part of the cost that is paid by the county at large from other available funds. State land so benefited shall bear its portion of the assessed cost.”

This section has been interpreted on a number of occasions by courts, especially as to what it means for a property “to be benefited in accordance with the special benefits conferred” clause. In addition, courts have often used special benefit provisions as interpreted for other special assessment proceedings and for other types of improvements, both inside and outside of Ohio, in reaching conclusions on exactly what it means to confer special benefits.

One legal principle of defining special benefits to land is that “a special benefit to land may consist of either a present increase in its value, or a future or potential benefit . . .”

and that the determination is a question of the particular fact situation (*D'Antuono v. City of Springfield*, 114 Ohio App. 102, 106). Further, another court, in finding that an assessment was void, declared the assessment void “. . . in that it substantially and materially exceeded the special benefits it conferred upon the land” (*Kangesser Foundation v. City of Euclid*, 159 N. E. 2d 919).

Another legal issue with special assessments deals with whether different classes of users can be assessed differently. Here one court ruled that the phrase in the statute requiring the assessment of “all the property within a county sewer district to be benefitted” did not require uniform assessments, and “implies that different classes of property may exist within the sewer district and therefore different benefits may result”. (*Board of County Commissioners of Fairfield County v. Hessler, et al*, 5<sup>th</sup> District Court of Appeals Case # 2007 CA00028, decided 6-30-08).

Finally, in cases appealed from the probate court, dealing with an action to enjoin an improvement, higher courts have generally deferred to the trial court’s decision unless the trial court decision is characterized by “a clear abuse of discretion”.

For additional information refer to the following additional cases dealing with county special assessment projects:

- *Drillex, Inc. v. Lake County Board of Commissioners*. 159 Ohio App 3d 384.
- *Prechnicki v. McCormack, et al.*, 8<sup>th</sup> District Court of Appeals Case No. 73579, decided 7-30-98.
- *Haymes et al. v. Holzmer*, 3 Ohio App. 3d 377, 6<sup>th</sup> District Court of Appeals Case No. L-80-400, decided 10-9-81.

## **28.79 DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITY IMPROVEMENTS WHERE SPECIAL ASSESSMENTS WILL BE LEVIED AND COLLECTED**

If the proposed drainage or storm water prevention and replacement facility improvement will levy and collect special assessments on property in the district a much more rigorous and time consuming process must be followed for the improvement. In the case where assessments are being levied there are over 30 steps that need to be followed when using the special assessment procedures contained in ORC Chapter 6117. These procedures are detailed at the end of this Chapter in Exhibit 6.

### **28.791 DISCUSSION OF CERTAIN NOTICES TO COUNTY AUDITOR**

ORC Section 319.61 is a statute of general application to all political subdivisions that are authorized to make public improvements involving the levy of special assessments. Under this statute two types of notices must be given to the county auditor as follows:

1. A notice of intention to proceed with the public improvement.

2. A notice of the levy of special assessment or charges.

In Exhibit 6 at the end of this Chapter we have included both of these notices in the outline of the assessment procedure recommended. The “notice of intention to proceed” is the equivalent of the improvement resolution referenced in ORC Chapter 6117 and must be certified to the county auditor within 15 days of its adoption. In the case of the “notice of the levy of special assessments”, this resolution must be certified within 20 days after its adoption.

It should be noted that Division B(4) of this section defines “special assessments and charges” to mean “special assessments or charges excluding charges for utility services.” While some maintain this would exclude water, sewer, and other utilities from the notice requirement, only utility charges, not special assessments are exempt from the notice requirement.

The county auditor records these special assessments in a special assessment record that must be maintained in the auditor’s office. This filings are important because of the order of the lien that attaches with the assessment. In most cases the lien for special assessments takes priority over other liens with the exception of mortgage liens as further detailed in ORC Section 319.61.

**28.80 LIMITATIONS ON THE RIGHT TO APPEAL DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT IMPROVEMENTS TO THE PROBATE COURT**

While the previous section generally discussed appeals relating to assessment projects, this section will go into more detail and discuss various issues when appeals are perfected by property owners.

A property owner is required to give notice of intent to appeal and the basis for the appeal prior to the adoption of the improvement resolution. If such a notice of intent to appeal is not given, an appeal may not be taken later (*Gallman v. Board of County Commissioners of Mercer County*. 159 Ohio St. 253).

While some maintain that this notice is only required for projects involving two or more counties, this is not the case. In addition to the above cited case, the Eleventh District Court of Appeals, in the case *Blair v. Board of County Commissioners of Geauga County, et. al.* (Case No. 95-G-1960, decided 6-14-96) determined that the courts in interpreting ORC Sections 6117.09 and 6117.10 “have held that the section only set forth one procedure for bringing this type of administrative appeal.”

Basing it ruling on *Gallman*, the Third Appellate District Court in a case originating in Allen County in 1985 held that “in every appeal from an improvement determination, the appellant is required to file both a notice of the intent to appeal and a notice to appeal. The appellate court reached this holding even though the reference to the notice of intent to appeal was contained in R.C. 6117.10, not R.C. 6117.09.”

What causes some of the confusion and misunderstanding on this issue is the fact that the section heading in some versions of the Ohio Revised Code that precede the actual language in ORC 6117.10 reads “Appeal when improvement is located in two or more counties.” Yet, ORC Section 1.01 specifies that “. . . section headings . . . do not constitute any part of the law as contained in the ‘Revised Code’.” And while the first paragraph of this section specifies that when a project is located in two or more counties that an appeal is filed in the county where the property is located, the remainder of ORC Section 6117.10 also applies to projects in one county as well as to projects in two or more counties.

There are three reasons that a property owner may appeal as detailed in the previous section 28.79, item #15. If such notice is given then the commissioners must set a reasonable amount of a bond to pay for costs associated with the appeal if the property owner does not prevail. Then appeals must be perfected in the probate court within 10 days after the adoption of the improvement resolution.

In certain cases the ability to appeal is limited. If the Director of Ohio EPA has ordered the improvement as necessary for the public health and welfare pursuant to ORC Section 6117.34, no appeal may be taken to the probate court as it relates to the necessity of the improvement, however, an appeal may be taken on the other two statutory bases for appeal. While the statute allows OEPA orders for drainage and prevention and replacement facility improvements, such action by OEPA is less likely than for water and sewer improvements.

Likewise, no appeal may be taken on the basis of (1) the necessity of the improvement or (2) the boundaries of the assessment district if owners of property that will be assessed for at least 85% of the cost of the improvement have provided written consent to the decision by the commissioners to proceed to adopt the improvement resolution (ORC 6117.09). If an appeal has been perfected in the probate court on the basis of these two reasons and the county later receives written consent from property owners who will be assessed for at least 85% of the cost of the improvement the county can then file a motion in court to dismiss the appeal. It should be noted that this does not limit the ability for a property owner to appeal on the basis of the third reason for which an appeal may be perfected—on the basis of the apportionment of the tentative assessment.

## **28.81 PROCEDURAL PROVISIONS RELATING TO APPEALS OF DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITY IMPROVEMENTS**

If an appeal is filed, the county must then file with the probate court the original papers in the improvement proceedings along with a transcript of the proceedings from the commissioners’ journal certified by the clerk. These items must be filed with the court within 10 days of the property owner filing of the required bond with the county auditor. The probate court then docket the case. After this initial step, following are the general procedural steps in the appellate process:

1. After the case is docketed, the court selects a date for a hearing on all preliminary questions in the appeal and for the examination of papers and commissioners' proceedings as submitted by the clerk. This is to occur within five days after the case is docketed (ORC 6117.13).
2. At the preliminary hearing the court hears and rules on preliminary motions and questions arising under the appeal. If the court finds that the proceedings are irregular, or the appeal was not perfected properly, the court dismisses the appeal and taxes costs on the appealing property owners (ORC 6117.14).
3. If the appeal is not dismissed the court sets a date for a trial within 20 days after the preliminary hearing.
4. The court then publishes in a newspaper of general circulation a notice of the appeal including the time and place of the trial. This notice must be published twice. The first publication must be printed at least 15 days before the trial; the second at least eight days before the trial.

If more than one property owner appeals the cases are consolidated, but the court considers the facts that surround each appeal separately (ORC 6117.16).

## **28.82 DECISION BY THE PROBATE COURT**

At the end of the trial the court must find separately on each claim to adjust the tentative assessment assigned to each property owner. Depending on the basis of the appeals the court also needs to find:

1. Whether the improvement is necessary for the public health, convenience, welfare; or
2. Whether the cost of the improvement will exceed the benefit to the district; or
3. Whether the boundaries of the assessment district should be changed.

If the probate court finds that the cost of the improvement exceeds the benefit, it declares the improvement not necessary for the public health, convenience, or welfare and then the commissioners must abandon the improvement (ORC 6117.17, 6117.19).

When appeals pertain to the boundaries of the assessment district or the apportionment of the tentative assessment and the court determines that the boundaries of the assessment district or the tentative assessment should be changed, commissioners may make the changes and proceed with the improvement as modified as long as the court has not found that the improvement is not necessary or the cost of the improvement exceeds the benefits (ORC 6117.20). However, no property can be added to the assessment district unless the new owners have been notified by the court and have had the opportunity to be heard in court (ORC 6117.17).

While the general rule is that costs of the appeal are generally paid by the losing party, the probate court has considerable discretion on how to allocate costs among the parties to the appeal. See ORC Section 6117.18 for more information.

### **28.83 AUTHORITY OF COURTS IN DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITY PROCEEDINGS**

Ohio law provides some guidance to all courts that may be involved in court proceedings concerning a drainage project or a project involving prevention and replacement facilities. This guidance applies to appeals pursuant to ORC Section 6117.09 and also to court actions to enjoin, reverse, or declare void the sewer proceedings or to enjoin the collection of a tax or assessment. If the court finds a “manifest error” in the proceedings affecting the rights of a property owner the court may set aside the proceedings relating to the appealing property owner without affecting other parties that have not appealed.

Any court may accept parol testimony that the improvement will be conducive to the public health, convenience, and welfare and that any steps required by law have been “substantially complied with” even if there were errors or defects in records relating to the improvement, and may correct any “gross injustice” in assessments levied. Any court may, on final hearing, make such orders as the court deems equitable including ordering any assessment to stand for collection, that it be levied in whole or in part, or may perpetually enjoin the assessment or any part of it. Also, in the case where the assessment has already been paid under protest, the court may order all or a part of it to be refunded (ORC 6117.24).

### **28.84 APPEALS FROM THE PROBATE COURT**

Parties may appeal a decision of the probate court to the court of appeals and then to the Supreme Court. If the appeal is on the necessity of the improvement, the construction is delayed until all appeals have been exhausted. If, on the other hand, the appeal is on the basis or the nature of the assessment district or the apportionment of the tentative assessments, commissioners may proceed with the improvement as directed by the probate court in its ruling. When a higher court later rules on the other issues the county makes adjustments to conform to the final ruling of the court of appeals or the Supreme Court (ORC 6117.23).

### **28.85 ANNUAL CERTIFICATION OF ASSESSMENTS**

Assessments must be certified annually to the county auditor not later than the second Monday of September (ORC 6117.33). This includes assessments deferred pursuant to ORC Section 6117.061. The certification to the auditor must show both the assessments to be collected and those deferred. It must show the amount and time of collection for each assessment. The statute provides that the county auditor record all assessments in the sewer improvement record, however, it appears that in this case it should be recorded in a drainage improvement record, and is probably an oversight when the law was changed.



The assessments bear interest if bonds were issued or another type of loan was used to finance the improvement. The assessment constitutes a lien on the property and is paid with property taxes either annually or semiannually for a period of not more than 40 years. Assessments of \$25 or less are payable at the next payment of taxes. Assessments on the tax bill, if not paid when due, are subject to the same penalties and interest payments as for real property taxes.

For those assessments that have been deferred, the commissioners must review them each August. If it is determined that the circumstances have changed since the original deferment and the assessment is no longer inequitable, the assessment can be certified for collection. This certification of a previously deferred assessment must also be made by the second Monday of September. The payment of previously deferred assessments must be collected so as to correspond with the other assessments for which bonds have been issued, but in not less than 5 years. Also, the payment cannot be required before non-deferred assessments are due.

After assessments have been deferred for 20 years, however, they must be certified for collection. In this case the period of collection is not more than 20 nor less than five years provided that assessments need not be made earlier than the last payment of non-deferred assessments. If it has been determined by the prosecutor that the drainage or prevention and replacement facility was not collectible because it was in a agricultural district, the assessment still cannot be collected at the end of the 20 year period. See the next Section for additional information on this issue.

## **28.86 ASSESSMENTS IN AGRICULTURAL DISTRICTS**

The collection of special assessments for water and sewer for property located in an agricultural district established pursuant to ORC Section 929.03 is clearly prohibited under the law as explained in Sections 28.29 and 28.57 of this Chapter. When it comes to special assessments for drainage and prevention and replacement facilities, the law is subject to a number of interpretations and thus advice from the county prosecutor is advised.

ORC Section 929.03(A)(1) provides that:

No public entity with authority to levy special assessments on real property shall collect an assessment for purposes of sewer, water, or electrical service on real property that is within an agricultural district as described in division (A)(2) of this section without the permission of the owner, except that any assessment may be collected on a lot surrounding a dwelling or other structure not used in agricultural production that does not exceed one acre or the minimum area required by local zoning or subdivision rules, whichever is the greater area.

However, there is no definition of the term “sewer” in ORC Chapter 929. And while ORC Section 6117.01 includes a definition of “drainage facilities” which includes a “storm sewer” and a “combined sewer”, the definitions in this section also includes other items

that are clearly not “sewers”, such as open ditches, dams, and retention ponds and “prevention and replacement facilities.” that are clearly not “sewers.”

It is important that the prosecutor make the determination if the facilities anticipated under the proposed project are subject to the collection of the assessment or not before the beginning of the project because it will affect the procedures that must be followed and notices that must be given as explained in Exhibit 5, step 5 and Section 28.85. For more information on agricultural districts see Chapter 93 of this *Handbook*.

## **28.87 ASSESSMENTS FOR PLANS AND PRELIMINARY ENGINEERING PURPOSES**

While most assessments are for the construction of improvements, counties also may levy assessments for the following purposes:

1. For a general or revised general plan of drainage for the district.
2. For detailed plans, specifications, estimate of costs, and tentative assessments for the improvement.
3. For costs to prepare a financing plan, for actual financing of the improvement, and for legal services.

These assessments are often referred to as preliminary engineering assessments and they must be apportioned according to benefits or tax valuation, or by a combination of these methods. The assessments may be for up to 20 years. Their use should be considered if the county is not confident of the support for the improvements or of the property owners' ability and willingness to pay the local costs of the improvements. In this manner, the county commissioners require the area property owners to make a commitment to pay the costs of preparing the plans and cost estimates for the project even if the commissioners later decide not to proceed with construction. Otherwise, these costs must be paid from existing district funds or the general fund (ORC 6117.251). Some counties also utilize this section when planning and design costs are substantial regardless of whether the county believes the project will proceed. This is often referred to as a Detailed Planning Assessment (DPA).

In order to levy preliminary engineering assessments commissioners must first adopt a resolution that includes the following:

1. A statement that it is necessary to provide drainage or prevention and replacement facility improvements in a sewer district, or drainage sub-district, and to maintain and operate them.
2. A description of the type of improvement the county anticipates will be constructed.
3. A statement that funds are needed to pay the preliminary costs of the improvements that will be incurred prior to the time they will initiate proceedings for

the construction of the improvements.

Before adopting this resolution commissioners must give public notice of the proposed resolution to determine the necessity of the improvements. The notice must include a description of the properties to be benefited by the improvements and include the time and place of the hearing. It must be published in a newspaper of general circulation in the county once a week for two consecutive weeks or by publication as provided in ORC Section 7.16. Notice can also be given by mailing a copy of the notice by first class or certified mail to the owners of the properties proposed to be assessed, or by a combination of these methods. The first publication or mailing must occur at least two weeks before the hearing.

At the hearing commissioners hear all persons whose properties are proposed to be assessed and the evidence it considers necessary. Commissioners then determine the necessity of the proposed improvements and direct the sanitary engineer to prepare tentative assessments.

Before adopting the resolution levying the assessments the law requires another notice to property owners. Commissioners must give notice either by one publication in a newspaper of general circulation in the county, or by mailing a copy of the notice by first class or certified mail to the property owners. The notice must be provided at least 10 days before the meeting where the commissioners will consider the assessment resolution and must include the time and place of the meeting.

At the hearing where assessments will be levied the commissioners hear all whose properties are going to be assessed, must correct any errors found, and may make such revisions that seems just. The commissioners then adopt the resolution levying the assessments on benefited properties. These assessments must be certified to the county auditor for collection.

No further action can be taken or work done for 10 days after the adoption of the resolution making the preliminary engineering assessments. If no appeal is taken during this 10 day period the action of the commissioners is final. If an appeal has been taken to the probate court no further action can be taken and no further work can be done on the improvement until the appeal is resolved. The board may issue debt for up to 20 years for preliminary engineering assessments.

## **28.88 MAINTENANCE ASSESSMENTS**

Counties may also assess property for the maintenance and operation of drainage and prevention and replacement facility improvements after construction. The assessment may be for the maintenance, repair and operation of the improvement. No notice is required for these assessments unless the amount of the assessment exceeds 10% of the original cost of project construction. If the cost exceeds 10% then the procedure required for the original assessment must be repeated (ORC 6117.32)

## **28.89 PROPERTY TAX AND DEBT AUTHORITY FOR DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITIES**

In the case of construction of drainage and storm water prevention and replacement facility improvements, ORC Section 6117.31 gives authority for commissioners to “levy taxes in addition to all other taxes authorized by law” to pay for the sanitary engineer and his assistants and for paying for “that part of the cost of the improvement to be paid by the county or of the interest to accrue thereon . . .”. It should be noted that this authority is limited to situations where the county is paying all or part of the improvement with county funds.

This provision also provides that such a levy is subject to limitation in the law concerning the “aggregate amount, rate, maximum rate, and combined maximum rate of taxation”, but it and other sections of ORC Chapter 6117 make it clear that the county may pay all or any part of drainage and prevention and replacement facility improvements with general fund or other monies, although this almost never happens. For example ORC Section 6117.30 dealing with special assessments specifically refers to “any part of the cost that is paid by the county at large from other available funds”.

Commissioners are also granted the authority to “levy a tax under (under ORC Chapter 5705) upon all property listed and assessed for taxation in such sewer district or drainage sub-district . . .” (ORC 6117.311). This tax is for the purpose of “paying for a part or all of the cost of any improvement . . . in a sewer district . . . or in a designated sub-district thereof” and must be submitted to the voters. This provision is rarely used.

This provision of law also authorizes commissioners to issue bonds under the provisions of ORC Chapter 133. In this case, bonds can only be issued after approval by the electors of the sewer district or sub-district and the total net indebtedness may not exceed 5% of the total assessment value of the district or sub-district. The question of levying such a tax or issuing bonds must be certified to the county auditor, by a unanimous vote of the commissioners, at least 75 days before the election and must include a map of the district or sub-district. A copy of the map must also be sent to the board of elections. Bonds issued under this section are exempt from the statutory debt limit in ORC Section 133.07.

Also of special significance is the fact that if the commissioners submit the question of a bond issue to the electors under ORC Section 6117.311 then public hearings and other proceedings for special assessment projects are not required, because most of those procedures only apply to assessment projects as explained previously.

In addition to the above statutes in ORC Chapter 6117, and more commonly used by counties, is the authority to issue revenue debt. In addition, recent changes to the law allow for the county to also issue industrial revenue bonds for drainage and storm water prevention and replacement facilities which appear to have been placed in the law for a very specific situation and its general applicability is questionable.

ORC Sections 133.07(C)(2)(b) and 133.08 allows revenue debt to be issued for “surface drainage and sewerage systems or facilities.” ORC Section 133.08(B)(1) also specifies that drainage and prevention and replacement facilities “are hereby determined to qualify as facilities described in Section 13 of Article VIII, Ohio Constitution.” This constitutional provision allows for assistance that benefits “industry, commerce, distribution, and research” and “to create or preserve jobs and employment opportunities.” ORC Section 165.01 also defines eligible projects to include “drainage facilities and prevention and replacement facilities” under the industrial development bond chapter of the Ohio Revised Code. Finally, ORC Section 165.03 exempts drainage and storm water prevention and replacement facility projects from the general requirement that IRB’s must be certified to the commissioners by a county designated community improvement corporation prior to the issuance of the debt.

## **28.90 ESTABLISHMENT OF DRAINAGE FACILITY RATES AND CHARGES**

Commissioners may establish reasonable rates and charges “to be paid by any person or public agency owning or having possession or control of any properties that are connected with, capable of being served by, or otherwise served directly or indirectly by, drainage facilities owned or operated by or under the jurisdiction of the county, including, but not limited to, properties requiring, or lying within an area of the district requiring, in the judgment of the board, the collection, control, or abatement of waters originating or accumulating in, or flowing in, into, or through, the district . . .”. Rates may be changed at any time the commissioners feel is advisable and are paid periodically as determined by the commissioners (ORC 6117.02(D)). It should be noted that drainage charges are permissive, while sewer and water rates are mandatory. In addition, note that like the sewer law, rates may be charged to persons “capable of being served by” a drainage facility. But unlike the sewer law, persons may also be charged if they are “otherwise served directly or indirectly by drainage facilities, a much broader ability to charge for facilities.

In addition, the commissioners may establish the following rates and charges for services related to drainage rates and charges:

1. Penalties for late payments. It should be noted that courts have determined that the rules cannot provide for interest payments as a form of penalty (*Yoder, Holmes Co. Treasurer v. Morilo, Inc., et al.*, 119 Ohio App. 3d 257).
2. The amounts to be paid as a security deposit prior to obtaining drainage service.
3. Connection or tap-in charges. Tap-in charges must be paid before a person connects to a county drainage facility. There are two options for the payment of tap-in fees. First, a lump sum payment for the full amount of the tap-in fee may be required before the property connects. Second, the tap-in charge can be made in installments if the commissioners’ rules so allow. If commissioners allow for installments, the rules must provide for the time when installments are due, the amount of the installments, the amount and type of security, carrying charges, and penalties for late or non-payments. The rates and charges attributable to

connection charges being paid in installments can be included in invoices for other drainage rates and charges.

### **28.91 ESTABLISHMENT OF RATES AND CHARGES FOR COSTS RELATED TO NPDES PHASE II FEDERAL STORM WATER PROGRAM**

In addition to the rates and charges that may be established as described in the previous section, commissioners may “fix the rates and charges in order to pay the costs of complying with the requirements of phase II of the storm water program of the national pollutant discharge elimination system established in 40 C.F.R. part 122”. Unlike the rates and charges explained in the previous section, NPDES rates and charges may be paid as a part of property tax bills and do not have to be billed directly to property owners first. Commissioners must certify information to the county auditor that is adequate for the auditor to identify each parcel and the amount of the rate and charge to each parcel (ORC 6117.02(D)).

### **28.92 DISCOUNTED OR REDUCED RATES AND CHARGES FOR SENIOR CITIZENS**

When establishing or modifying drainage rates and charges commissioners may establish discounted rates and charges for persons 65 or older. When establishing discounted rates, commissioners must establish eligibility requirements for the discounted or reduced rates. This may include that a person is eligible for the homestead exemption property tax credit or is a low-and-moderate-income person (ORC 6117.02(F)).

### **28.93 COLLECTION OF RATES AND CHARGES**

Counties may provide for the collection of rates and charges themselves or they may contract with a financial institution to perform this service for the county. Commissioners, however, can only execute such a contract if requested by the county treasurer and the contract must be competitively bid if the amount exceeds the dollar bidding threshold. Under this type of contract the financial institution will receive drainage bill payments at a post office box, process the payments, and deposits them into the county treasurer’s account. The institution also must provide the treasurer with daily receipt information (ORC 321.03).

### **28.94 COLLECTION OF DELINQUENT DRAINAGE RATES AND CHARGES**

If drainage rates, charges, and tap-in fees paid in installments on the drainage bill are not paid when due, the county has a number of options to collect the delinquent bill as follows:

1. Certify the unpaid rates, charges, tap-in fees, and penalties to the county auditor for placement on the tax duplicate for collection. When placed on the tax duplicate the charges constitute a lien on the property (ORC 6117.02(D) (1)). It should be noted, however, that the lien attaches to the property only after the delinquent charges have been both certified and placed upon the tax duplicate by the county

auditor. In cases where a transfer of property takes place prior to a lien attaching to the property, the new owner has no obligation to make the payment (OAG 81-030).

If the unpaid charges are placed on the tax duplicate the county treasurer is required to accept a partial payment equal for the full amount of the unpaid bill separate from payment of any unpaid taxes. When the payment of the full amount of the bill is made, the lien is released.

2. Take legal action against the party responsible for non-payment of the rates and charges.
3. Terminate drainage service under rules established by the commissioners.
4. Use any security deposit to pay for any of the unpaid rates and charges as specified in rules established by the commissioners.

#### **28.95 DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITY IMPROVEMENTS BY PETITION OF ALL PROPERTY OWNERS TO COUNTY COMMISSIONERS**

Ohio law allows petitions to be submitted to the commissioners by property owners who desire drainage and prevention and replacement facility improvements. A petition must, however, be signed by all property owners desiring the improvement. The petition, addressed to the commissioners, must request the county to acquire or construct and operate and maintain the improvement; describe the improvement and the lots and lands owned by the petitioners to be assessed to pay the cost of acquisition or construction, maintenance, and operation of the improvement; consent that the property owned by the petitioners may be assessed to pay the cost of the improvement and of its maintenance and operation; and, waive the right to receive all legal notices otherwise required by law.

The commissioners then direct the county sanitary engineer to prepare the necessary plans, specifications and estimate of cost for the construction, operation and maintenance costs of the improvement along with a tentative assessment. The project can be expedited in the case of a petition project under certain circumstances. In order to expedite the project the property owners who petitioned for the improvement must state, in writing, that they have examined the estimated cost and tentative assessment and have no objections to either.

Another condition for an expedited project is for property owners to state, in writing, that they agree to waive their option to prepay their assessment in cash if bonds are to be used to finance the improvement prior to construction or acquisition. If these written statements are received from all petitioners the project is exempt from any of the notice requirements the law would normally require and also there will be no opportunity for the property owners to file objections to the improvement.

As is the case in non-petition improvements the tentative assessment is for the information of property owners and is not certified to the county auditor for collection. When the project is complete and the final cost is determined the county sanitary engineer prepares a revised assessment based on the actual cost. This actual cost is confirmed by resolution of the commissioners and then is certified to the county auditor for collection (ORC 6117.28). This must be done by the second Monday in August for placement on the next tax duplicate (6117.33).

Finally, in the case of an improvement initiated by petition there is no right to appeal to the probate court unless the commissioners refuse to proceed with the improvement. In the case of a rejection of the petition, or failure to approve the improvement, commissioners must receive notice of intent from the property owner that an appeal will be perfected and the property owner must also file the bond required under normal assessment procedures with the county auditor (ORC 6117.11).

### **28.96 CONTRACTUAL DRAINAGE SERVICES UPON APPLICATION FROM A PERSON OR PUBLIC AGENCY**

In the case of properties located outside of any county sewer district or drainage sub-district any person or public agency may apply for the provision of drainage services to the properties of the person or public agency. Such an application can be submitted by owners outside of the county as well as those within the county. If such application is made commissioners may acquire or construct facilities on terms the commissioners determine to be equitable.

The amount paid cannot be less than the original or comparable assessment for similar property located within the district, or if there is no basis for comparison, the amount the commissioners feel are “reasonable and fairly reflective of that portion of the costs” attributable to the properties to be served in the application (ORC 6117.38).

These payments may be made in a lump sum, in installments as a part of tap-in fees, or by special assessments. If special assessments are used commissioners must follow the procedure required for assessment projects as previously detailed. Commissioners can only levy assessments on properties located within the county (ORC 6117.38(A)).

### **28.97 EPA ORDERED DRAINAGE AND PREVENTION AND REPLACEMENT FACILITY IMPROVEMENTS/FINDINGS AND ORDERS**

A board of health, municipality, or board of township trustees may file a written complaint with OEPA that unsanitary conditions exist in the county. If OEPA determines that it is necessary for the public health and welfare that drainage and prevention and replacement facility improvements need to be made in the unincorporated area of the county, OEPA makes this finding and orders the commissioners to take “corrective action” which usually results in the construction of improvements (ORC 6117.34). If commissioners fail to comply with the OEPA order the Attorney General can seek a writ of mandamus in court (ORC 6117.36).



## **28.98 SALE OR DISPOSITION OF COUNTY OWNED DRAINAGE AND PREVENTION AND REPLACEMENT FACILITIES**

Commissioners may sell or otherwise dispose of drainage and prevention and replacement facilities to another public agency or person if they determine such action is in the best interest of the county and those served by the facilities.

To effectuate a sale a resolution must be adopted stating the reasons for the sale and establish any terms and conditions of the sale. These terms and conditions may include such items as a minimum sale price, a schedule of rates and charges that will be initially paid for services, and other terms and conditions specified in the resolution.

The resolution must also specify a time and place for a hearing of objections to the sale. Notice that the resolution has been adopted and the time and place of the hearing must be published in a newspaper of general circulation, or as required by ORC Section 7.16, or once a week for two consecutive weeks. The public hearing cannot be held until at least 24 days after the first publication. In addition, a copy of the notice must be sent by first class or certified mail before the date of the second publication, to any public agency within the area served by the drainage or prevention and replacement facilities.

After the public hearing no action can be taken for five days, during which written objections to the sale can be filed by residents or public agencies. Commissioners must consider the objections and then determine whether to proceed with the sale.

If the decision is to sell, commissioners must then receive bids after advertising once a week for four consecutive weeks in a newspaper of general circulation, or as provided in ORC Section 7.16. Commissioners then may award the sale to a responsible bidder whose proposal is considered to be in the best interests of the county and of the users of the system. Commissioners may reject all bids. If the sale or disposition of drainage and prevention and replacement facilities is to a municipality under ORC Section 6117.05(B) then these procedures do not have to be followed.

## **28.99 PURCHASE OF DRAINAGE OR STORM WATER PREVENTION AND REPLACEMENT FACILITIES**

Commissioners also have authority to purchase drainage and prevention and replacement facilities owned by any person or public agency to provide drainage service within a county sewer district or drainage sub-district. Prior to making such a purchase the county sanitary engineer must certify that the facilities are properly designed and constructed. Prior to purchase, commissioners must consult with the sanitary engineer to determine a reasonable price for the facilities. This sale may be finalized through a negotiation process. To pay for the acquisition commissioners may issue debt and use special assessments against benefited properties for all or part of the purchase. If assessments are used, regular assessment procedures must be followed as if the project was being constructed (ORC 6117.38(B)).

## EXHIBIT 1

### SUMMARY OF CHANGES TO COUNTY WATER, SEWER, AND DRAINAGE LAW

As enacted by

#### HB 549 OF THE 123<sup>RD</sup> GENERAL ASSEMBLY

Effective March 12, 2001

HB 549 of the 123<sup>rd</sup> General Assembly was legislation brought to CCAO by Summit County and their Bond Counsel, Squires, Sanders and Dempsey LLP. CCAO took a position to support the proposal and the bill was sponsored by Representative George Terwilliger, a former Warren County Commissioner. The primary purpose of the bill was to modernize Ohio Revised Code Chapters 6103 and 6117 dealing with water, sewer, and storm water improvements. Significant changes in this law had not occurred since 1927 in the case of the water law and 1958 for the sewer law. The changes generally modernized the language and made many of the provisions in the two ORC Chapters consistent. It also clarified much of the law concerning storm water or drainage contained in ORC Chapter 6117.

Perhaps the most significant change to both the water and sewer law were provisions that modified the procedures for making improvements when projects did not use special assessments to acquire or construct improvements. The new law exempted these projects from many of the procedures that were required for improvements constructed where property was assessed for special benefits conferred on the property. In addition, the following summarizes some of the other changes enacted in HB 549:

- Provides that before a county begins to utilize ORC Chapter 6117 for drainage purposes the county engineer has the option to serve as the county sanitary engineer for this purpose pursuant to an agreement with the commissioners.
- Allows rules dealing with the termination of services, security deposits, and penalties for late payment of water, sewer, and drainage bills.
- Allows court actions to collect delinquent water, sewer, and drainage bills and allows a security deposit to be applied to delinquent bills.
- In the case of water allows the county to render estimated bills periodically but requires that water meters be read at least every quarter and allows requests for special reading of water meters when a sale of property is anticipated.
- Allows for special assessments for water, sewer and drainage general plans and for preliminary engineering purposes.
- Allows state owned land to be subject to special assessments

- Provides various provisions relating to contracting for a variety of services with public and private entities related to water, sewer, and drainage.
- Allows commissioner to obtain land, right to land, or options by negotiation.
- Make various changes to definitions, especially concerning terms relating to the clarified drainage authority in the law such as “drainage” and “drainage facilities.”
- Made numerous other changes to the authority for drainage in the law such as allowing special assessments to property “capable of being served” and when the property is “directly or indirectly” benefitted.
- Specifically allowed for the use of drainage rates and charges to be used to finance drainage project, in addition to special assessments, and provided new procedures for the collection of delinquent drainage rates and charges.

## **EXHIBIT 2**

### **SUMMARY OF CHANGES TO COUNTY SEWER AND DRAINAGE LAW**

As enacted by

#### **HB 562 OF THE 127<sup>th</sup> GENERAL ASSEMBLY**

Effective September 23, 2008

HB 562 of the 127<sup>th</sup> General Assembly contained a variety of changes to the sewer district law. Following is a summary of the major changes to the law:

- Authorizes the construction and use of prevention or replacement facilities and projects for the prevention of combined sewer overflows, and defines "prevention or replacement facilities" and "combined sewer.
- Authorizes a county to issue revenue bonds to provide funding for a sewer district for sanitary facilities, drainage facilities, and prevention or replacement facilities.
- Revises the definition of "project" in the Industrial Development Bonds Law to include sanitary facilities, drainage facilities, and prevention or replacement facilities, thus authorizing the issuance of revenue bonds for those facilities.
- Authorizes a board of county commissioners to adopt rules requiring property owners whose property is served by sewers to prevent storm water from entering a combined sewer and causing an overflow or an inflow to a sanitary sewer.
- Authorizes rate reductions and credits against sewer charges to a property owner that implements a project or program that prevents storm water from entering a combined sewer and causing an overflow.
- Makes other changes to include combined sewer overflow prevention and the use of prevention or replacement facilities in ORC Chapter 6117.

**EXHIBIT 3**

**OHIO REVISED CODE CHAPTERS 6103 AND 6117**

**COMPARABLE PROVISIONS**

<b>Topic/Subject</b>	<b>ORC Chapter 6103 County Water Law</b>	<b>ORC Chapter 6117 County Sewer &amp; Drainage Law</b>
Definitions	6103.01	6117.01
Sanitary Engineer	6103.02(B)	6117.01(C)
Adoption of Rules	6103.02(C)	6117.01(D); 6117.012
Establishment of Rates & Charges	6103.02(F)	6117.02(A),(B), (D)
Payment of Delinquent Rates & Charges	6103.02(G)	6117.02(C), (D)
Indirect Cost Allocation Plan	6103.02(H)	6117.02(E)
Purposes & Assessments	6103.02	6117.01 and 6117.02
Jurisdiction After Annexation	6103.04	6117.05
General Plans	6103.05(A)	6117.06(A)
Resolution of Necessity	6103.05(E)	6117.06(E)
Deferred Assessments	6103.051	6117.061
Deferred Assessments for Development	6103.052	6117.062
Improvement Resolution	6103.06	6117.07
Incidental Costs and Expenses	6103.12	6117.29
Construction/Debt	6103.03, 6103.07, 6103.10	6117.08, 6117.27, 6117.311
Appeals to Probate Court	NA	6117.09-6117.23
Planning Assessments	6103.081	6117.251
Petition Projects	6103.11	6117.28
Revised Assessments	6103.15	6117.32
Certification of Assessments	6103.16	6117.33
Special Assessment Benefits	6103.13	6117.30
EPA Findings and Orders	6103.17	6117.34
Eminent Domain/Property Acquisition	6103.25	6117.39, 6117.47
Mandatory Connections	NA	6117.51
Contracts to Supply Services	6103.20	6117.38
Contracts Between Counties & Other Entities	6103.21	6117.41
Other Contract Provisions	6103.22	6117.42

## EXHIBIT 4

### PROCEDURES REQUIRED FOR A SEWER PROJECT USING SPECIAL ASSESSMENTS

Step #	Topic/ Action	Description of Topic/Action
1	<b>Determine Scope of Improvement</b>	The commissioners adopt a resolution which determines the portion of the improvement included in the general plan of sewerage that will be constructed and has the sanitary engineer prepare detailed plans, specifications, estimated costs, and tentative assessments. The tentative assessments are for the information of property owners and cannot be certified to the county auditor for collection (ORC 6117.06(C)).
2	<b>Apply for Financial Assistance</b>	If state or federal financial assistance is available and desired application for such aid should, by this time, have been filed. If detailed plans and specifications are required before application can be made, it should be completed as soon as plans and specifications are available.
3	<b>Approve Plans, Specifications, &amp; Assessments</b>	The detailed plans, specifications, estimated cost and tentative assessments are then approved by resolution of the commissioners and are preserved by the county and available for public inspection.
4	<b>EPA Plan Approval</b>	OEPA approves the detailed plans, specifications and profiles. If necessary, changes to obtain such approval are made, and again approved by the county commissioners.
5	<b>CAUV Notices</b>	<p>Notices must be sent to certain property owners who will be assessed for the improvement. Notice must be sent to those owners who are being taxed under the current agricultural use value (CAUV) program and whose properties are <u>not</u> in agricultural districts established under ORC Section 929.02. The notice must declare the intent of the commissioners to adopt the resolution of necessity for the improvement. The notice must be sent to such owners by either first class or certified mail at least 24 days prior to the date the commissioners adopt the resolution of necessity. The notice can be eliminated if waivers of notice are obtained from affected property owners. The notice must contain:</p> <ul style="list-style-type: none"> <li>• Proposed date of adoption of resolution of necessity.</li> <li>• A statement that the improvement will be financed in whole or in part by special assessments and that all property owners not located in an agricultural district may be subject to an assessment, and</li> <li>• A statement that an agricultural district may be established by filing an application with the county auditor.</li> </ul> <p>If it appears that owners cannot be found or did not receive the mailed notice because of the return of mailed notices then a notice must be placed in a newspaper of general circulation at least 10 days before the adoption of the resolution of necessity. It should also be noted that this applies if the project is being assessed by acreage and/or front footage, but if a "user equivalent" is used for the project then this notice is not required.</p>

<p style="text-align: center;"><b>6</b></p>	<p style="text-align: center;"><b>Schedule Hearing on Resolution of Necessity &amp; Publish Newspaper Notice</b></p>	<p>Notice of a public hearing on a proposed resolution of necessity must be published (ORC 6117.06(E)). Two notices must be published once a week for two consecutive weeks in a newspaper of general circulation in the county. As an alternative, notice can be provided pursuant to ORC Section 7.16 which requires one full publication, an abbreviated second publication, and posting on the official state public notice web site. The published notice must include:</p> <ul style="list-style-type: none"> <li>• The time and place of the hearing.</li> <li>• A summary description of the proposed improvement, including its general route and termini.</li> <li>• A summary description of the assessment area.</li> <li>• The location where the plans, specifications, estimates of cost, and tentative assessments are on file and may be examined.</li> </ul>
<p style="text-align: center;"><b>7</b></p>	<p style="text-align: center;"><b>Mailed Hearing Notices to Property Owners</b></p>	<p>No later than the date of the second publication, notice must be sent by first class or certified mail to all property owners to be assessed. The mailed notices must include the same information contained in the printed notices and must also include a statement that the property will be assessed for the improvement. In addition, written notice also must be provided at the same time to the clerk of any municipality that has territory in the assessment district. The notice to the municipality also must state if the municipality is to be assessed; if it is being assessed the notice must identify the specific property to be assessed.</p>
<p style="text-align: center;"><b>8</b></p>	<p style="text-align: center;"><b>Public Hearing of Resolution of Necessity</b></p>	<p>The public hearing on the resolution of necessity is conducted. All interested persons must be heard and the minutes of the hearing are entered on the commissioners' journal, showing the persons who appear in person or are represented by an attorney.</p>
<p style="text-align: center;"><b>9</b></p>	<p style="text-align: center;"><b>Accept Written Objections</b></p>	<p>During a period of five days following the public hearing, the county commissioners accept written objections to or endorsements of the improvement; the character or termini of the improvement; the boundaries of the area to be assessed; or, the tentative assessments. No action may be taken on the resolution of necessity during this period and all written objections must be preserved in the commissioners' office.</p>
<p style="text-align: center;"><b>10</b></p>	<p style="text-align: center;"><b>Adopt Resolution of Necessity</b></p>	<p>County commissioners adopt a resolution of necessity declaring the necessity of the improvement. The resolution of necessity must include:</p> <ul style="list-style-type: none"> <li>• A description of the improvement including its nature, location, route, and termini.</li> <li>• That the improvement is necessary for the preservation and promotion of the public health and welfare.</li> <li>• Refer to the plans, specifications, profiles, estimate of costs and tentative assessments and state where they are on file and may be reviewed.</li> </ul>

		<ul style="list-style-type: none"> <li>• State the portion of the improvement that is to be specially assessed against the benefited properties and what part, if any, will be paid by the county at large.</li> <li>• A description of the boundaries of that part of the district to be assessed.</li> </ul> <p>Specify the time and place for a public hearing where objections to the improvement, the tentative assessments, or the boundaries of the area to be assessed will be heard. The hearing must be at least 24 days after the date of the first required public notice in a newspaper.</p>
<p>11</p>	<p><b>Request for Deferred Assessments</b></p>	<p>During the five day period following the public hearing any property owner may make a written request for deferment of the collection of the assessment (ORC 6117.061). The written request must include:</p> <ul style="list-style-type: none"> <li>• The identity of the property.</li> <li>• The present use of the property.</li> <li>• The estimated market value of the property showing the value of land and buildings separately.</li> <li>• The reasons why a portion of the assessment should be deferred.</li> <li>• The amount requested to be deferred.</li> </ul> <p>The commissioners may defer up to 75% of the assessment prior to the adoption of the improvement resolution if they find it would be inequitable to collect the full amount of the assessment. In making this determination the following factors must be considered:</p> <ul style="list-style-type: none"> <li>• Whether the property is presently unimproved.</li> <li>• Whether it is being used for agricultural purposes.</li> <li>• The extent to which it is in immediate need of sewer service.</li> <li>• Whether the assessment is a disproportionately high percent of the estimated market value of the property when the improvement is completed.</li> </ul> <p>If such deferments are approved, the sanitary engineer must revise the tentative assessment list. It should also be noted that, generally, a request for a deferment must be submitted within the five day period after the public hearing on the resolution of necessity. There is, however, an escape value for later deferrals “for good cause shown” prior to the commissioners confirming a revised assessment list under ORC Section 6117.32 and after construction is completed (ORC 6117.062)</p> <p>In addition, the full amount of an assessment can be deferred, when the land is classified as agricultural on the tax duplicate, and the assessment is for a trunk or main sewer line serving new development, if the commissioners find that the benefit will not be realized until the land use is changed. Historically, these types of deferments involved water and sewer rotary commission loans which is discussed in Section 28.30.</p>



<p style="text-align: center;"><b>12</b></p>	<p style="text-align: center;"><b>Schedule Hearing on Improvement Resolution &amp; Mail Notices</b></p>	<p>The commissioners should adopt a resolution fixing the time and place of a session of the board when it will consider the resolution determining to proceed with the improvement, commonly referred to as the improvement resolution. The resolution should also direct the clerk to mail a notice of the time and place of the session to all persons who filed written objections during the five day period after the hearing on the resolution of necessity in the same manner and form as the previous notice except, the notice to those who filed objections also must contain the following statement: "any person, firm, or corporation desiring to appeal from the final order or judgment of the board upon any of the questions mentioned in section 6117.09 of the revised code shall, on or before the date of the passage of the improvement resolution, give notice in writing of an intention to appeal, specifying therein the matters to be appealed from (ORC 6117.07, see also ORC 6117.10)."</p> <p>Note: There is a lengthy process of notifications, publications, and hearings in ORC 6117.07 for handling amendments to plans that place additional properties into the project area that were not originally part of the project. See "<b>LIMITATIONS ON THE RIGHT TO APPEAL SEWER IMPROVEMENTS TO THE PROBATE COURT</b>" in Section 28.23.</p>
<p style="text-align: center;"><b>13</b></p>	<p style="text-align: center;"><b>Changes to the Improvement Resolution</b></p>	<p>In the event the county determines to modify the improvement after considering the objections made at the public hearing and any written objections filed, the commissioners should adopt a resolution directing the county sanitary engineer to make any needed changes to the plans, estimate of cost, tentative assessments, and boundaries of the assessment district.</p> <p>If the boundaries of the assessment district are modified to include property owners not previously assessed, a new written notice to property owners and a new newspaper notice must be given and another public hearing must be held unless the new owners waive notice. The second, or any subsequent hearing must be at least 24 days after the first notice of the newspaper notice.</p> <p>The same requirements for notice and a five day period for the filing of written objections apply at this stage of the process if new property owners are being assessed. If new parcels of property are included in the assessment area after this second public hearing, another public hearing is required until no new property owners are included in the assessment area.</p>
<p style="text-align: center;"><b>14</b></p>	<p style="text-align: center;"><b>Ratification of Plans</b></p>	<p>Commissioners must then, by resolution, ratify the plans, the character and termini, and the tentative assessments of the improvement as originally presented or as amended when new owners are added to the assessment district.</p>
<p style="text-align: center;"><b>15</b></p>	<p style="text-align: center;"><b>Notice of Intent to Appeal From Property Owners</b></p>	<p>Any property owner that intends to appeal must file a notice with the commissioners on or before the date the commissioners adopt the improvement resolution (ORC 6117.10). There are three statutory reasons for which an appeal may be perfected as specified in ORC Section 6117.09 which are:</p> <ul style="list-style-type: none"> <li>• The necessity of the improvement, which may include the contention of the property owner that the cost of the improvement will exceed the benefits of the improvement.</li> </ul>

		<ul style="list-style-type: none"> <li>• The boundaries of the assessment district.</li> <li>• The tentative apportionment of the special assessment.</li> </ul> <p>It should be noted that some believe the ORC Section 6117.10 only applies to projects in two or more counties, however, the courts have ruled that it applies to both single and joint county projects. This is explained in greater detail in Section 28.23.</p>
<b>16</b>	<b>Adopt Improvement Resolution</b>	<p>Commissioners then adopt a resolution to proceed with the improvement. This is referred to as the improvement resolution. The improvement resolution should contain:</p> <ul style="list-style-type: none"> <li>• A declaration to proceed with the improvement as provided in the resolution of necessity.</li> <li>• That the improvement will be in accordance with the plans and specifications as ratified, or amended.</li> <li>• Whether bonds or certificates of indebtedness will be issued in anticipation of the collection of special assessments.</li> <li>• If other unappropriated county funds are to be used for the improvement this must also be stated.</li> </ul> <p>The improvement resolution directs the sanitary engineer to proceed with the project, and may contain a provision authorizing advertising for construction bids. In some instances, the authorization to advertise for bids takes place later in a separate resolution.</p>
<b>17</b>	<b>Establish Amount of Appeal Bond</b>	<p>If written notices of a property owner's intention to appeal have been filed on or before the date of the passage of the improvement resolution, the commissioners must then, by resolution, fix a reasonable amount for a bond to be given by the property owner in the event an appeal is actually filed in probate court. The purpose of the bond is to pay all costs incurred in the appeal if the property owner does not prevail (ORC 6117.10). This bond must be filed with the county auditor within 10 days of the establishment of the amount of the bond. In the case where the appellant is a minor or disabled person for which a guardian has been appointed, the guardian may appeal if the probate court first consents. In this case, no bond is required, however, if the appeal is not upheld, the estate is liable for the costs incurred in the appeal (ORC 6117.12).</p> <p>It should be noted that some believe the ORC Section 6117.10 only applies to projects in two or more counties, however, the courts have ruled that it applies to both single and joint county projects. This is explained in greater detail in Section 28.23.</p>
<b>18</b>	<b>File Improvement Resolution with Auditor</b>	<p>Within 15 days following adoption of the improvement resolution, a copy of the resolution must be filed with the county auditor (ORC 319.61).</p>
<b>19</b>	<b>Appeal Period</b>	<p>During a 10 day period following the adoption of the improvement resolution, no construction of the improvement may occur. (ORC 6117.08). Appeals to probate court may be filed during this period.</p>

		Specific details concerning appeals are described in Sections 28.23-28.27.
<b>20</b>	<b>Proceed with Improvement</b>	If no appeals are filed, within 10 days of the adoption of the improvement resolution, the commissioners' action is final and the improvement may proceed (ORC 6117.08). If an appeal is filed in this 10 day period the construction is generally deferred until the appeal is settled.
<b>21</b>	<b>Improvement Financing</b>	At this stage of the process, after appeals have been disposed of, debt may be issued for the improvement. Refer to ORC Sections 6117.25 for additional information on the issuance of bonds and notes for sewer improvements and some of the special circumstances that apply when debt is issued that relate to deferred assessments. Also refer to ORC Sections 133.15(B), 6117.25 and 6117.29 for the details of what costs may be included in the issuance of debt relating to a sewer improvement
<b>22</b>	<b>Construction Bids</b>	Advertising for construction bids may begin pursuant to the county competitive bidding law, ORC Sections 307.86-307.92, with the required notices in a newspaper of general circulation in the county in accordance with ORC Section 307.87. In addition, there are a few other bidding related issues for sewer projects required by ORC Section 6117.27.
<b>23</b>	<b>Award Contract</b>	The bids are opened and tabulated at the time stated in the advertisement. The commissioners may then adopt a resolution authorizing a contract to the lowest and best bidder.
<b>24</b>	<b>Revised Cost Estimate</b>	The sanitary engineer prepares a revised estimate of cost based upon the bid or bids determined to be the lowest and best.
<b>25</b>	<b>Sale of Notes</b>	Arrangements can be made at this time for the sale of notes in an amount sufficient to cover the cost of the project.
<b>26</b>	<b>Adopt Note Resolution</b>	The note resolution is adopted by the commissioners setting forth the amount of the notes. This amount is based upon the engineer's revised estimate of cost. If arrangements have been made for the sale of the notes, the interest rate and the name of the purchaser often also appear in the resolution.
<b>27</b>	<b>Execute Contracts</b>	The contract with the lowest and best bidder is executed; the certificate of availability of funds is affixed to the contract by the county auditor; and performance bond or surety is provided or the bid bond is converted to a performance bond.
<b>28</b>	<b>Commence Construction</b>	Construction of the improvement begins.
	<b>Final</b>	When construction of the improvement is completed, the final cost of the improvement is determined (ORC 6117.31). In addition, the portion of the cost which is to be assessed is determined and the amounts of

29	<b>Costs/Assessments</b>	<p>the tentative assessments are revised and the final assessment list is prepared (ORC 6117.32).</p> <p>No notice of the revised assessments must be given to property owners <u>unless</u> the revised assessment exceeds the tentative assessment. If this occurs new notice must be given to all property owners as the original notice was provided and property owners then have additional appellate rights (ORC 6117.32).</p>
30	<b>Adopt Resolution Confirming Assessments</b>	<p>The final assessment list is filed in the commissioners' office. The commissioners then adopt the assessment resolution confirming the levying of special assessments and stating the number of years the assessments will be collected. The resolution must also specify the period during which property owners may pay their assessment in cash in order to avoid interest payments on bonds.</p>
31	<b>File Notice with Auditor</b>	<p>Within 20 days after the adoption of the assessment resolution a notice must be sent to the county auditor (ORC 319.16).</p>
32	<b>Prepayments Accepted</b>	<p>During the period established for the payment of cash, the county treasurer accepts payments, and at the end of the prepayment period, the treasurer reports the amount of cash received.</p>
33	<b>Certification of Assessment</b>	<p>All assessments or portions of assessments not paid in cash are certified to the county auditor for collection. This must be done before the second Monday of August for placement on the next tax duplicate. This applies to projects initiated by the commissioners and to those where property owners petition for the improvement under ORC Section 6117.28 (ORC 6117.33). For additional information see Sections 28.28 and 28.38.</p>
34	<b>Adopt Bond Resolution</b>	<p>The commissioners adopt the bond resolution establishing the amount of bonds to be issued in anticipation of the collection of special assessments; fixing the amount of principal to be paid in each year; and, the payment dates of both principal and interest.</p>
35	<b>Construction Payments are Made</b>	<p>The proceeds received from the bonds are used promptly, together with the money collected as cash payments during the prepayment period, along with other monies available for the project, to retire the notes issued in anticipation of the issuance of the bonds.</p>

## EXHIBIT 5

### PROCEDURES REQUIRED FOR A WATER PROJECT USING SPECIAL ASSESSMENTS

Step #	Topic/ Action	Description of Topic/Action
1	<b>Determine Scope of Improvement</b>	The commissioners adopt a resolution which determines the portion of the water improvement included in the general plan for water supply that will be constructed and has the sanitary engineer prepare detailed plans, specifications, estimated costs, and tentative assessments. The tentative assessments are for the information of property owners and cannot be certified to the county auditor for collection (ORC 6103.05(C)).
2	<b>Apply for Financial Assistance</b>	If state or federal financial assistance is available and desired application for such aid should, by this time, have been filed. If detailed plans and specifications are required before application can be made, it should be completed as soon as plans and specifications are available.
3	<b>Approve Plans, Specifications, &amp; Assessments</b>	The detailed plans, specifications, estimated cost and tentative assessment are then approved by resolution of the commissioners and are preserved by the county and available for public inspection.
4	<b>EPA Plan Approval</b>	OEPA approves the detailed plans, specifications and profiles. If necessary, changes to obtain such approval are made, and again approved by the county commissioners.
5	<b>CAUV Notices</b>	<p>Notices must be sent to certain property owners who will be assessed for the improvement. Notice must be sent to those owners who are being taxed under the current agricultural use value (CAUV) program and whose properties are not in agricultural districts established under ORC Section 929.02 (ORC 6103.05(D)). The notice must declare the intent of the commissioners to adopt the resolution of necessity for the improvement. The notice must be sent to such owners by either first class or certified mail at least 24 days prior to the date the commissioners adopt the resolution of necessity. The notice can be eliminated if waivers of notice are obtained from affected property owners. The notice must contain:</p> <ul style="list-style-type: none"> <li>• Proposed date of adoption of resolution of necessity.</li> <li>• A statement that the improvement will be financed in whole or in part by special assessments and that all property owners not located in an agricultural district may be subject to an assessment, and</li> <li>• A statement that an agricultural district may be established by filing an application with the county auditor.</li> </ul> <p>If it appears that owners cannot be found or did not receive the mailed notice because of the return of mailed notices then a notice must be placed in a newspaper of general circulation at least 10 days before the adoption of the resolution of necessity. It should also be noted that this applies if the project is being assessed by acreage and/or front footage, but if a "user equivalent" is used for the project then this notice is not</p>

		required.
<b>6</b>	<b>Schedule Hearing on Resolution of Necessity &amp; Publish Newspaper Notice</b>	<p>Notice of a public hearing on a proposed resolution of necessity must be published in a newspaper of general circulation (ORC 6103.05(E)). Two notices must be published once a week for two consecutive weeks in a newspaper of general circulation in the county. As an alternative, notice can be provided pursuant to ORC Section 7.16 which requires one full publication, an abbreviated second publication, and posting on the official state public notice web site. The published notice must include:</p> <ul style="list-style-type: none"> <li>• The time and place of the hearing.</li> <li>• A summary description of the proposed improvement, including its general route and termini.</li> <li>• A summary description of the assessment area.</li> <li>• The location where the plans, specifications, estimates of cost, and tentative assessments are on file and may be examined.</li> </ul>
<b>7</b>	<b>Mailed Hearing Notices to Property Owners</b>	<p>No later than the date of the second publication, notice must be sent by first class or certified mail to all property owners to be assessed. The mailed notices must include the same information contained in the printed notices and must also include a statement that the property will be assessed for the improvement. In addition, written notice also must be provided at the same time to the clerk of any municipality that has territory in the assessment district. The notice to the municipality also must state if the municipality is to be assessed; if it is being assessed the notice must identify the specific property to be assessed.</p>
<b>8</b>	<b>Public Hearing of Resolution of Necessity</b>	<p>The public hearing on the resolution of necessity is conducted. All interested persons must be heard and the minutes of the hearing are entered on the commissioners' journal, showing the persons who appear in person or are represented by an attorney.</p>
<b>9</b>	<b>Accept Written Objections</b>	<p>During a period of five days following the public hearing, the county commissioners accept written objections to or endorsements of the improvement; the character or termini of the improvement; the boundaries of the area to be assessed; or, the tentative assessments. No action may be taken on the resolution of necessity during this period and all written objections must be preserved in the commissioners' office.</p>
<b>10</b>	<b>Adopt Resolution of Necessity</b>	<p>County commissioners adopt a resolution of necessity declaring the necessity of the improvement. The resolution of necessity must include:</p> <ul style="list-style-type: none"> <li>• A description of the improvement including its nature, location, route, and termini.</li> <li>• That the improvement is necessary for the preservation and promotion of the public health and welfare.</li> <li>• Refer to the plans, specifications, profiles, estimate of costs and tentative assessments and state where they are on file</li> </ul>

		<p>and may be reviewed.</p> <ul style="list-style-type: none"> <li>• State the portion of the improvement that is to be specially assessed against the benefited properties and what part, if any, will be paid by the county at large.</li> <li>• A description of the boundaries of that part of the district to be assessed.</li> <li>• Specify the time and place for a public hearing where objections to the improvement, the tentative assessments, or the boundaries of the area to be assessed will be heard. The hearing must be at least 24 days after the date of the first required public notice in a newspaper.</li> </ul>
<p>11</p>	<p><b>Request for Deferred Assessments</b></p>	<p>During the five day period following the public hearing any property owner may make a written request for deferment of the collection of the assessment (ORC 6103.051). The written request must include:</p> <ul style="list-style-type: none"> <li>• The identity of the property.</li> <li>• The present use of the property.</li> <li>• The estimated market value of the property showing the value of land and buildings separately.</li> <li>• The reasons why a portion of the assessment should be deferred.</li> <li>• The amount requested to be deferred.</li> <li>• The commissioners may defer up to 75% of the assessment prior to the adoption of the improvement resolution if they find it would be inequitable to collect the full amount of the assessment. In making this determination the following factors must be considered:</li> <li>• Whether the property is presently unimproved.</li> <li>• Whether it is being used for agricultural purposes.</li> <li>• The extent to which it is in immediate need of sewer service.</li> <li>• Whether the assessment is a disproportionately high percent of the estimated market value of the property when the improvement is completed.</li> </ul> <p>If such deferments are approved, the sanitary engineer must revise the tentative assessment list. It should also be noted that, generally, a request for a deferment must be submitted within the five day period after the public hearing on the resolution of necessity. There is, however, an escape value for later deferrals “for good cause shown” prior to the commissioners confirming a revised assessment list under ORC Section 6103.15 and after construction is completed (ORC 6103.051).</p> <p>In addition, the full amount of an assessment can be deferred, when the land is classified as agricultural on the tax duplicate, and the assessment is for a trunk or main sewer line serving new development, if the commissioners find that the benefit will not be realized until the</p>

		land use is changed. Historically, these types of deferments involved water and sewer rotary commission loans which is discussed in Section 28.58 (ORC 6103.052).
12	<b>Schedule Hearing on Improvement Resolution</b>	<p>The commissioners should adopt a resolution fixing the time and place of a session of the board when it will consider the resolution determining to proceed with the improvement, commonly referred to as the improvement resolution.</p> <p>It should be noted that certain requirements of ORC 6117.07 which apply to sewer projects do not apply to water projects. Specifically, ORC 6117.07 requires that a notice be mailed to all persons who filed written objections during the five day period after the hearing on the resolution of necessity on sewer projects and this does not apply to water projects. See Section 28.22(12) for additional information.</p> <p>Note: There is a lengthy process of notifications, publications, and hearings in ORC 6103.06 for handling amendments to plans that place additional properties into the project area that were not originally part of the project. See <b>“LIMITATIONS ON THE RIGHT TO APPEAL WATER IMPROVEMENTS TO THE PROBATE COURT”</b> in Section 28.51.</p>
13	<b>Changes to the Improvement Resolution</b>	<p>In the event the county determines to modify the improvement after considering the objections made at the public hearing and any written objections filed, the commissioners should adopt a resolution directing the county sanitary engineer to make any needed changes to the plans, estimate of cost, tentative assessments, and boundaries of the assessment district.</p> <p>If the boundaries of the assessment district are modified to include property owners not previously assessed, a new written notice to property owners and a new newspaper notice must be given and another public hearing must be held unless the new owners waive notice. The second, or any subsequent hearing, must be at least 24 days after the first publication of the newspaper notice.</p> <p>The same requirements for notice and a five day period for the filing of written objections apply at this stage of the process if new property owners are being assessed. If new parcels of property are included in the assessment area after this second public hearing, another public hearing is required until no new property owners are included in the assessment area.</p>
14	<b>Ratification of Plans</b>	Commissioners must then, by resolution, ratify the plans, the character and termini, and the tentative assessments of the improvement as originally presented or as amended when new owners are added to the assessment district.
15	<b>Notice of Intent to Appeal From Property Owners</b>	<p>Any property owner that intends to appeal must file a notice with the commissioners on or before the date the commissioners adopt the improvement resolution (ORC 6117.10). There are three statutory reasons for which an appeal may be perfected as specified in ORC Section 6117.09 which are:</p> <ul style="list-style-type: none"> <li>• The necessity of the improvement, which may include the contention of the property owner that the cost of the improvement will exceed the benefits of the improvement.</li> </ul>



		<ul style="list-style-type: none"> <li>• The boundaries of the assessment district.</li> <li>• The tentative apportionment of the special assessment.</li> </ul> <p>It should be noted that some believe the ORC Section 6117.10 only applies to projects in two or more counties, however, the courts have ruled that it applies to both single and joint county projects. This is explained in greater detail in Section 28.51.</p>
<b>16</b>	<b>Adopt Improvement Resolution</b>	<p>Commissioners then adopt a resolution to proceed with the improvement. This is referred to as the improvement resolution. The improvement resolution should contain:</p> <ul style="list-style-type: none"> <li>• A declaration to proceed with the improvement as provided in the resolution of necessity.</li> <li>• That the improvement will be in accordance with the plans and specifications as ratified, or amended.</li> <li>• Whether bonds or certificates of indebtedness will be issued in anticipation of the collection of special assessments.</li> <li>• If other unappropriated county funds are to be used for the improvement this must also be stated.</li> </ul> <p>The improvement resolution directs the sanitary engineer to proceed with the project, and may contain a provision authorizing advertising for construction bids. In some instances, the authorization to advertise for bids takes place later in a separate resolution.</p>
<b>17</b>	<b>Establish Amount of Appeal Bond</b>	<p>If written notices of a property owner's intention to appeal have been filed on or before the date of the passage of the improvement resolution, the commissioners must then, by resolution, fix a reasonable amount for a bond to be given by the property owner in the event an appeal is actually filed in probate court. The purpose of the bond is to pay all costs incurred in the appeal if the property owner does not prevail in court (ORC 6117.10). This bond must be filed with the county auditor within 10 days of the establishment of the amount of the bond. In the case where the appellant is a minor or disabled person for which a guardian has been appointed, the guardian may appeal if the probate court first consents. In this case, no bond is required, however, if the appeal is not upheld, the estate is liable for the costs incurred in the appeal (ORC 6117.12).</p> <p>It should be noted that some believe the ORC Section 6117.10 only applies to projects in two or more counties, however, the courts have ruled that it applies to both single and joint county projects. This is explained in greater detail in Section 28.51.</p>
<b>18</b>	<b>File Improvement Resolution with Auditor</b>	<p>Within 15 days following adoption of the improvement resolution, a copy of the resolution must be filed with the county auditor (ORC 319.61).</p>
<b>19</b>	<b>Appeal Period</b>	<p>During a 10 day period following the adoption of the improvement resolution, no construction of the improvement may occur (ORC 6103.07). Appeals to probate court may be filed during this period.</p>

		Specific details concerning appeals are described in Sections 28.51-28.55.
<b>20</b>	<b>Proceed with Improvement</b>	If no appeals are filed, within 10 days of the adoption of the improvement resolution, the commissioners' action is final and the improvement may proceed (ORC 6103.07). If an appeal is filed in this 10 day period the construction is generally deferred until the appeal is settled.
<b>21</b>	<b>Improvement Financing</b>	At this stage of the process debt may be issued for the improvement. Refer to ORC Section 6103.08(A) for additional information on the issuance of bonds and notes for water improvements and some of the special circumstances that apply when debt is issued that relate to deferred assessments. Also refer to this ORC 133.15(B), 6103.08(A) and 6103.12 for the details of what costs may be included in the issuance of debt relating to a water improvement.
<b>22</b>	<b>Construction Bids</b>	Advertising for construction bids may begin pursuant to the county competitive bidding law, ORC Sections 307.86-307.92, with the required notices in a newspaper of general circulation in the county in accordance with ORC Section 307.87. In addition, there are a few other bidding related issues for water projects required by ORC Section 6103.10.
<b>23</b>	<b>Award Contract</b>	The bids are opened and tabulated at the time stated in the advertisement. The commissioners may then adopt a resolution authorizing a contract to the lowest and best bidder.
<b>24</b>	<b>Revised Cost Estimate</b>	The sanitary engineer prepares a revised estimate of cost based upon the bid or bids determined to be the lowest and best.
<b>25</b>	<b>Sale of Notes</b>	Arrangements can be made at this time for the sale of notes in an amount sufficient to cover the cost of the project.
<b>26</b>	<b>Adopt Note Resolution</b>	The note resolution is adopted by the commissioners setting forth the amount of the notes. This amount is based upon the sanitary engineer's revised estimate of cost. If arrangements have been made for the sale of the notes, the interest rate and the name of the purchaser often also appear in the resolution.
<b>27</b>	<b>Execute Contracts</b>	The contract with the lowest and best bidder is executed; the certificate of availability of funds is affixed to the contract by the county auditor; and, performance bond or surety is provided or the bid bond is converted to a performance bond.
<b>28</b>	<b>Commence Construction</b>	Construction of the improvement begins.
<b>29</b>	<b>Final Costs/Assessments</b>	When construction of the improvement is completed, the final cost of the improvement is determined (ORC 6103.14). In addition, the portion of the cost which is to be assessed is determined and the amounts of the tentative assessments are revised and the final assessment list is prepared (ORC 6103.15).

		No notice of the revised assessments must be given to property owners <u>unless</u> the revised assessment exceeds the tentative assessment. If this occurs new notice must be given to all property owners as original notice was provided and property owners then have additional appellate rights (ORC 6103.15).
<b>30</b>	<b>Adopt Resolution Confirming Assessments</b>	The final assessment list is filed in the commissioners' office. The commissioners then adopt the assessment resolution confirming the levying of special assessments and stating the number of years the assessments will be collected. The resolution must also specify that property owners may pay their assessment in cash within 30 days in order to avoid interest payments on bonds (ORC 6103.14).
<b>31</b>	<b>File Notice with Auditor</b>	Within 20 days after the adoption of the assessment resolution a notice must be sent to the county auditor (ORC 319.16).
<b>32</b>	<b>Prepayments Accepted</b>	During the 30 day period established for the payment of cash, the county treasurer accepts payments, and at the end of the prepayment period, the treasurer reports the amount of cash received.
<b>33</b>	<b>Certification of Assessment</b>	All assessments or portions of assessments not paid in cash are certified to the county auditor for collection. This must be done before the second Monday of August for placement on the next tax duplicate. This applies to projects initiated by the commissioners and to those where property owners petition for the improvement under ORC Section 6103.11 (ORC 6103.16). For additional information see Sections 28.56 and 28.67.
<b>34</b>	<b>Adopt Bond Resolution</b>	The commissioners adopt the bond resolution establishing the amount of bonds to be issued in anticipation of the collection of special assessments; fixing the amount of principal to be paid in each year; and the payment dates of both principal and interest.
<b>35</b>	<b>Construction Payments are Made</b>	The proceeds received from the bonds are used promptly, together with the money collected as cash payments during the prepayment period, along with other monies available for the project, to retire the notes issued in anticipation of the issuance of the bonds.

## EXHIBIT 6

### **PROCEDURES REQUIRED FOR A DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT FACILITY PROJECTS USING SPECIAL ASSESSMENTS**

Step #	Topic/ Action	Description of Topic/Action
1	<b>Determine Scope of Improvement</b>	The commissioners adopt a resolution which determines the portion of the improvement included in the general drainage plan that will be constructed and has the sanitary engineer prepare detailed plans, specifications, estimated costs, and tentative assessments. The tentative assessments are for the information of property owners and cannot be certified to the county auditor for collection (ORC 6117.06(C)).
2	<b>Apply for Financial Assistance</b>	While state or federal financial assistance is generally not as available for these types of projects, some assistance is possible. If funds are identified applications for such aid should, by this time, have been filed. If detailed plans and specifications are required before application can be made, it should be completed as soon as plans and specifications are available.
3	<b>Approve Plans, Specifications, &amp; Assessments</b>	The detailed plans, specifications, estimated cost and tentative assessments are then approved by resolution of the commissioners and are preserved by the county and available for public inspection.
4	<b>EPA Plan Approval</b>	OEPA approval of the detailed plans, specifications and profiles for these types of projects vary with the specific project. If necessary, changes to obtain such approval are made, and again approved by the county commissioners.
5	<b>CAUV Notices</b>	<p>In the case of water and sewer projects, notices must be sent to certain property owners who will be assessed for the improvement. These notices must be sent to those owners who are being taxed under the current agricultural use value (CAUV) program and whose properties are <u>not</u> in agricultural districts established under ORC Section 929.02.</p> <p>In the case of drainage and prevention and replacement facility improvements counties should consult with the county prosecutor as to whether such notices must be sent because the statutes result in some ambiguity as will be explained in more detail in Section 28.86.</p> <p>If the prosecutor advises that these notices are required to be sent, the notice must declare the intent of the commissioners to adopt the resolution of necessity for the improvement. The notice must be sent to such owners by either first class or certified mail at least 24 days prior to the date the commissioners adopt the resolution of necessity. The notice can be eliminated if waivers of notice are obtained from affected property owners. The notice must contain:</p> <ul style="list-style-type: none"> <li>• Proposed date of adoption of resolution of necessity.</li> <li>• A statement that the improvement will be financed in whole or in part by special assessments and that all property owners not located in an agricultural district may be subject to an</li> </ul>

		<p>assessment, and</p> <ul style="list-style-type: none"> <li>• A statement that an agricultural district may be established by filing an application with the county auditor.</li> </ul> <p>If it appears that owners cannot be found or did not receive the mailed notice because of the return of mailed notices then a notice must be placed in a newspaper of general circulation at least 10 days before the adoption of the resolution of necessity. It should also be noted that this applies if the project is being assessed by acreage and/or front footage, but if a “user equivalent” is used for the project then this notice is not required.</p>
6	<p><b>Schedule Hearing on Resolution of Necessity &amp; Publish Newspaper Notice</b></p>	<p>Notice of a public hearing on a proposed resolution of necessity must be published in a newspaper of general circulation in the county (ORC 6117.06(E)). Two notices must be published once a week for two consecutive weeks. As an alternative, notice can be provided pursuant to ORC Section 7.16 which requires one full publication, an abbreviated second publication, and posting on the official state public notice web site. The published notice must include:</p> <ul style="list-style-type: none"> <li>• The time and place of the hearing.</li> <li>• A summary description of the proposed improvement, including its general route and termini.</li> <li>• A summary description of the assessment area.</li> <li>• The location where the plans, specifications, estimates of cost, and tentative assessments are on file and may be examined.</li> </ul>
7	<p><b>Mailed Hearing Notices to Property Owners</b></p>	<p>No later than the date of the second publication, notice must be sent by first class or certified mail to all property owners to be assessed. The mailed notices must include the same information contained in the printed notices and must also include a statement that the property will be assessed for the improvement. In addition, written notice also must be provided at the same time to the clerk of any municipality that has territory in the assessment district. The notice to the municipality also must state if the municipality is to be assessed; if it is being assessed the notice must identify the specific property to be assessed.</p>
8	<p><b>Public Hearing of Resolution of Necessity</b></p>	<p>The public hearing on the resolution of necessity is conducted. All interested persons must be heard and the minutes of the hearing are entered on the commissioners’ journal, showing the persons who appear in person or are represented by an attorney.</p>
9	<p><b>Accept Written Objections</b></p>	<p>During a period of five days following the public hearing, the county commissioners accept written objections to or endorsements of the improvement; the character or termini of the improvement; the boundaries of the area to be assessed; or, the tentative assessments. No action may be taken on the resolution of necessity during this period and all written objections must be preserved in the commissioners’ office.</p>
10	<p><b>Adopt Resolution of Necessity</b></p>	<p>County commissioners adopt a resolution of necessity declaring the</p>

		<p>necessity of the improvement. The resolution of necessity must include:</p> <ul style="list-style-type: none"> <li>• A description of the improvement including its nature, location, route, and termini.</li> <li>• That the improvement is necessary for the preservation and promotion of the public health and welfare.</li> <li>• Refer to the plans, specifications, profiles, estimate of costs and tentative assessments and state where they are on file and may be reviewed.</li> <li>• State the portion of the improvement that is to be specially assessed against the benefited properties and what part, if any, will be paid by the county at large.</li> <li>• A description of the boundaries of that part of the district to be assessed.</li> <li>• Specify the time and place for a public hearing where objections to the improvement, the tentative assessments, or the boundaries of the area to be assessed will be heard. The hearing must be at least 24 days after the date of the first required public notice in a newspaper.</li> </ul>
<p>11</p>	<p><b>Request for Deferred Assessments</b></p>	<p>During the five day period following the public hearing any property owner may make a written request for deferment of the collection of the assessment (ORC 6117.061). The written request must include:</p> <ul style="list-style-type: none"> <li>• The identity of the property.</li> <li>• The present use of the property.</li> <li>• The estimated market value of the property showing the value of land and buildings separately.</li> <li>• The reasons why a portion of the assessment should be deferred.</li> <li>• The amount requested to be deferred.</li> </ul> <p>The commissioners may defer up to 75% of the assessment prior to the adoption of the improvement resolution if they find it would be inequitable to collect the full amount of the assessment. In making this determination the following factors must be considered:</p> <ul style="list-style-type: none"> <li>• Whether the property is presently unimproved.</li> <li>• Whether it is being used for agricultural purposes.</li> <li>• The extent to which it is in immediate need of drainage service or prevention and replacement facilities.</li> <li>• Whether the assessment is a disproportionately high percent of the estimated market value of the property when the improvement is completed.</li> </ul> <p>If such deferments are approved, the sanitary engineer must revise the tentative assessment list. It should also be noted that, generally, a request for a deferment must be submitted within the five day period</p>

		after the public hearing on the resolution of necessity. There is, however, an escape value for later deferrals “for good cause shown” prior to the commissioners confirming a revised assessment list under ORC Section 6117.32 and after construction is completed (ORC 6117.062)
12	<b>Schedule Hearing on Improvement Resolution &amp; Mail Notices</b>	<p>The commissioners should adopt a resolution fixing the time and place of a session of the board when it will consider the resolution determining to proceed with the improvement, commonly referred to as the improvement resolution. The resolution should also direct the clerk to mail a notice of the time and place of the session to all persons who filed written objections during the five day period after the hearing on the resolution of necessity in the same manner and form as the previous notice except, the notice to those who filed objections also must contain the following statement: “any person, firm, or corporation desiring to appeal from the final order or judgment of the board upon any of the questions mentioned in section 6117.09 of the revised code shall, on or before the date of the passage of the improvement resolution, give notice in writing of an intention to appeal, specifying therein the matters to be appealed from (ORC 6117.07, see also ORC 6117.10).”</p> <p>Note: There is a lengthy process of notifications, publications, and hearings in ORC 6117.07 for handling amendments to plans that place additional properties into the project area that were not originally part of the project. See “<b>LIMITATIONS ON THE RIGHT TO APPEAL DRAINAGE AND STORM WATER PREVENTION AND REPLACEMENT IMPROVEMENTS TO THE PROBATE COURT</b>” in Section 28.80.</p>
13	<b>Changes to the Improvement Resolution</b>	<p>In the event the county determines to modify the improvement after considering the objections made at the public hearing and any written objections filed, the commissioners should adopt a resolution directing the county sanitary engineer to make any needed changes to the plans, estimate of cost, tentative assessments, and boundaries of the assessment district.</p> <p>If the boundaries of the assessment district are modified to include property owners not previously assessed, a new written notice to property owners and a new newspaper notice must be given and another public hearing must be held unless the new owners waive notice. The second, or any subsequent hearing, must be at least 24 days after the first publication of the notice in the newspaper.</p> <p>The same requirements for notice and a five day period for the filing of written objections apply at this stage of the process if new property owners are being assessed. If new parcels of property are included in the assessment area after this second public hearing, another public hearing is required until no new property owners are included in the assessment area.</p>
14	<b>Ratification of Plans</b>	Commissioners must then, by resolution, ratify the plans, the character and termini, and the tentative assessments of the improvement as originally presented or as amended when new owners are added to the assessment district.
15	<b>Notice of Intent to Appeal From Property</b>	Any property owner that intends to appeal must file a notice with the commissioners on or before the date the commissioners adopt the

	<b>Owners</b>	<p>improvement resolution (ORC 6117.10). There are three statutory reasons for which an appeal may be perfected as specified in ORC Section 6117.09 which are:</p> <ul style="list-style-type: none"> <li>• The necessity of the improvement, which may include the contention of the property owner that the cost of the improvement will exceed the benefits of the improvement.</li> <li>• The boundaries of the assessment district.</li> <li>• The tentative apportionment of the special assessment.</li> </ul> <p>It should be noted that some believe ORC Section 6117.10 only applies to projects in two or more counties, however, the courts have ruled that it applies to both single and joint county projects. This is explained in greater detail in Section 28.80.</p>
<b>16</b>	<b>Adopt Improvement Resolution</b>	<p>Commissioners then adopt a resolution to proceed with the improvement. This is referred to as the improvement resolution. The improvement resolution should contain:</p> <ul style="list-style-type: none"> <li>• A declaration to proceed with the improvement as provided in the resolution of necessity.</li> <li>• That the improvement will be in accordance with the plans and specifications as ratified, or amended.</li> <li>• Whether bonds or certificates of indebtedness will be issued in anticipation of the collection of special assessments.</li> <li>• If other unappropriated county funds are to be used for the improvement this must also be stated.</li> </ul> <p>The improvement resolution directs the sanitary engineer to proceed with the project, and may contain a provision authorizing advertising for construction bids. In some instances, the authorization to advertise for bids takes place later in a separate resolution.</p>
<b>17</b>	<b>Establish Amount of Appeal Bond</b>	<p>If written notices of a property owner's intention to appeal have been filed on or before the date of the passage of the improvement resolution, the commissioners must then, by resolution, fix a reasonable amount for a bond to be given by the property owner in the event an appeal is actually filed in probate court. The purpose of the bond is to pay all costs incurred in the appeal if the property owner does not prevail (ORC 6117.10). This bond must be filed with the county auditor within 10 days of the establishment of the amount of the bond. In the case where the appellant is a minor or disabled person for which a guardian has been appointed, the guardian may appeal if the probate court first consents. In this case, no bond is required, however, if the appeal is not upheld, the estate is liable for the costs incurred in the appeal (ORC 6117.12).</p> <p>It should be noted that some believe the ORC Section 6117.10 only applies to projects in two or more counties, however, the courts have ruled that it applies to both single and joint county projects. This will be explained in greater detail in Section 28.80.</p>
<b>18</b>	<b>File Improvement Resolution with Auditor</b>	<p>Within 15 days following adoption of the improvement resolution, a</p>



		copy of the resolution must be filed with the county auditor (ORC 319.61).
<b>19</b>	<b>Appeal Period</b>	During a 10 day period following the adoption of the improvement resolution, no construction of the improvement may occur. (ORC 6117.08). Appeals to probate court may be filed during this period. Specific details concerning appeals are described in Sections 28.80-28-82.
<b>20</b>	<b>Proceed with Improvement</b>	If no appeals are filed, within 10 days of the adoption of the improvement resolution, the commissioners' action is final and the improvement may proceed (ORC 6117.08). If an appeal is filed in this 10 day period the construction is generally deferred until the appeal is decided.
<b>21</b>	<b>Improvement Financing</b>	At this stage of the process debt may be issued for the improvement. Refer to ORC Section 6117.25 for additional information on the issuance of bonds and notes for drainage and prevention and replacement facility improvements and some of the special circumstances that apply when debt is issued that relate to deferred assessments. Also refer to this ORC Sections 133.15(B), 6117.25 and 6117.29 for the details of what costs may be included in the issuance of debt relating to these improvements.
<b>22</b>	<b>Construction Bids</b>	Advertising for construction bids may begin pursuant to the county competitive bidding law, ORC Sections 307.86-307.92, with the required notices in a newspaper of general circulation in the county in accordance with ORC Section 307.87. In addition, there are a few other bidding related issues for these projects required by ORC Section 6117.27.
<b>23</b>	<b>Award Contract</b>	The bids are opened and tabulated at the time stated in the advertisement. The commissioners may then adopt a resolution authorizing a contract to the lowest and best bidder.
<b>24</b>	<b>Revised Cost Estimate</b>	The sanitary engineer prepares a revised estimate of cost based upon the bid or bids determined to be the lowest and best.
<b>25</b>	<b>Sale of Notes</b>	Arrangements can be made at this time for the sale of notes in an amount sufficient to cover the cost of the project.
<b>26</b>	<b>Adopt Note Resolution</b>	The note resolution is adopted by the commissioners setting forth the amount of the notes. This amount is based upon the engineer's revised estimate of cost. If arrangements have been made for the sale of the notes, the interest rate and the name of the purchaser often also appear in the resolution.
<b>27</b>	<b>Execute Contracts</b>	The contract with the lowest and best bidder is executed; the certificate of availability of funds is affixed to the contract by the county auditor; and performance bond or surety is provided or the bid bond is converted to a performance bond.

<b>28</b>	<b>Commence Construction</b>	Construction of the improvement begins.
<b>29</b>	<b>Final Costs/Assessments</b>	<p>When construction of the improvement is completed, the final cost of the improvement is determined (ORC 6117.31). In addition, the portion of the cost which is to be assessed is determined and the amounts of the tentative assessments are revised and the final assessment list is prepared (ORC 6117.32).</p> <p>No notice of the revised assessments must be given to property owners <u>unless</u> the revised assessment exceeds the tentative assessment. If this occurs new notice must be given to all property owners as the original notice was provided and property owners then have additional appellate rights (ORC 6117.32).</p>
<b>30</b>	<b>Adopt Resolution Confirming Assessments</b>	The final assessment list is filed in the commissioners' office. The commissioners then adopt the assessment resolution confirming the levying of special assessments and stating the number of years the assessments will be collected. The resolution must also specify the period during which property owners may pay their assessment in cash in order to avoid interest payments on bonds.
<b>31</b>	<b>File Notice with Auditor</b>	Within 20 days after the adoption of the assessment resolution a notice must be sent to the county auditor (ORC 319.16).
<b>32</b>	<b>Prepayments Accepted</b>	During the period established for the payment of cash, the county treasurer accepts payments, and at the end of the prepayment period, the treasurer reports the amount of cash received.
<b>33</b>	<b>Certification of Assessment</b>	All assessments or portions of assessments not paid in cash are certified to the county auditor for collection. This must be done before the second Monday of August for placement on the next tax duplicate. This applies to projects initiated by the commissioners and to those where property owners petition for the improvement under ORC Section 6117.28 (ORC 6117.33). For additional information see Sections 28.85 and 28.95.
<b>34</b>	<b>Adopt Bond Resolution</b>	The commissioners adopt the bond resolution establishing the amount of bonds to be issued in anticipation of the collection of special assessments; fixing the amount of principal to be paid in each year; and, the payment dates of both principal and interest.
<b>35</b>	<b>Construction Payments are Made</b>	The proceeds received from the bonds are used promptly, together with the money collected as cash payments during the prepayment period, along with other monies available for the project, to retire the notes issued in anticipation of the issuance of the bonds.