



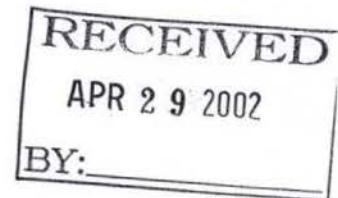
**ROBIN N. PIPER**  
**BUTLER COUNTY PROSECUTING ATTORNEY**

Government Services Center • 11th Floor  
P.O. Box 515 • 315 High St. • Hamilton, OH 45012-0515  
Phone 513-887-3474 • Fax 513-785-5206



April 25, 2002

Greg Wilkens  
Butler County Engineer  
1921 Fairgrove Avenue  
Hamilton, Ohio 45011



Dear Greg:

You have asked this office for an opinion as to the mechanics of implementing and, primarily, of funding a storm water drainage utility pursuant to R.C. Chapter 6117 (as modified by House Bill 549) and establishing a fee structure for such an undertaking. Your office had also inquired in an earlier correspondence as to whether the county could transfer or loan money from the assessments collected and maintained pursuant to the "ditch improvement fund" under R.C. Chapter 6131 to assist with the "start-up" costs relating to the creation of a storm water utility.

We note at the outset that to provide a thorough understanding of the provisions of the Ohio Revised Code Chapters involved in your inquiry, we have attached to this opinion a detailed summary of the pertinent provisions of R.C. Chapter 6117, followed by a more cursory review of provisions in Chapters 6131 and 6137 (as it relates to Chapter 6131). We also note that our response is based on our understanding that the primary focus of your inquiry concerns identifying the funding options that are available for the various stages involved in creating and operating a storm water drainage utility, i.e., the preliminary planning stage, the construction/acquisition phase and the ongoing maintenance aspects.

Effective March 1, 2001, House Bill 549 amended R.C. Chapter 6117 so as to include "drainage facilities" as part of county sewer district(s). Thus, under R.C. Chapter 6117, a board of county commissioners is vested with authority to lay out, establish and maintain one or more sewer districts within a county and, in so doing, to acquire, construct and maintain within any such district **sanitary facilities** (for the collection of waste storage, disposal and treatment) and **drainage facilities** (for the collection and control of storm waters). R.C. Chapter 6117 provides the board with several methods by which to finance the process of creating and operating these drainage facilities.

- ① Upon adopting a resolution declaring the necessity thereof, a board of county commissioners may have preliminary surveys prepared relating to drainage issues for any sewer district that the board is **considering constructing or acquiring**. Authorized surveys include drawings, plans, specifications,



estimates of costs for labor and materials and, essentially, any other material or information that the board, in its discretion, considers necessary or advisable. Any contract entered into for the surveys shall be considered contracts for professional services and may be paid for from the county's general fund or any other fund legally available. Moreover, the proceeds of any public obligations issued or incurred to pay the costs of facilities to which a survey relates may be used to pay any part of the cost under the contracts or to reimburse the fund from which payment was made.

Once a board of commissioners establishes a sewer district and <sup>2</sup>determines to undertake a drainage facility within the district, the board of commissioners may have the county sanitary engineer (or the county engineer, pursuant to agreement) prepare (or cause to be prepared) a general, but comprehensive, plan of drainage that includes prospective needs for additional drainage facilities in the district. The board may levy upon the properties to be benefitted in the district a preliminary assessment apportioned according to the benefits or tax valuation or a combination of both in order to obtain funds for the preparation of the plans, specifications, cost estimates, legal services, tentative assessment bases and other preliminary costs for the drainage improvement.

A board of county commissioners may determine to levy special assessments to pay any part of the acquisition or construction costs for a drainage improvement (which then requires the board to provide notice and a hearing to potentially affected landowners). The board may also authorize by resolution the issuance or incurrence of public obligations for the payment of any portion of expenditures relating to the acquisition or construction of the planned drainage improvement. Moreover, a board is authorized, in order to pay all or any portion of the cost of a drainage improvement, to levy a tax under R.C. Chapter 5705 upon all the property listed and assessed for taxation and may issue and execute bonds for and on behalf of the sewer district, subject to approval by a vote of the electors of the sewer district. The costs of the improvement could also be paid from any available county funds.

<sup>3</sup>In order to maintain the drainage facilities, a board of county commissioners is authorized to set reasonable rates and charges, including connection charges and penalties for late payments, to be paid by any person or public agency owning or having possession or control of any properties that are connected with or capable of being served by county drainage facilities.

Under R.C. Chapter 6131, boards of county commissioners are also vested with the authority to undertake the construction of drainage improvements. Each county is required to establish a "general drainage improvement fund," which consist of taxes levied and collected for drainage purposes under county levies and not otherwise disposed of, the proceeds of all bonds issued and sold under the drainage laws, collections from all special assessments for benefits to property and other such funds required to be paid into such by law, and a "ditch maintenance fund," which is comprised of monies collected from annual assessments levied against benefitted owners.

You have asked us whether the county may transfer or otherwise utilize the money collected and maintained pursuant to R.C. Chapter 6131 to assist with the costs related to creating a storm water utility under R.C. Chapter 6117.



R.C. 5705.09 establishes the various funds in which county tax dollars are to be kept: a general fund; a sinking fund whenever the subdivision/county has outstanding bonds other than serial bonds; a bond retirement fund for the retirement of serial bonds, notes or certificates of indebtedness; a special fund for each special levy; a special fund for each bond issue; a special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be made for a particular purpose; a special fund for each public utility operated by a subdivision; and, a trust fund for any amount received in trust. Pursuant to R.C. 5705.10 and Ohio Const. Art. XII, section 5, all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose, and every law imposing a tax shall state, distinctly, the purpose for which the levy was made, and the monies collected thereunder shall be applied to that purpose. Transfers of money from one fund to another are limited by R.C. 5705.14 and 5705.15, and the procedures for transfers are laid out in R.C. 5705.16, which requires a resolution<sup>(1)</sup> by the board of county commissioners, a petition<sup>(2)</sup> to the court of common pleas and approval<sup>(3)</sup> by the tax commissioner.

In Ohio Atty. Gen. Ops. No. 92-049, the Ohio Attorney General Office was asked whether the proceeds of a maintenance fund established pursuant to R.C. 6137.02 could be used to pay an annual bonus to an employee of the county engineer's office. The Attorney General stated that the purpose for the maintenance funds established by counties pursuant to R.C. 6137.02 was for the repair, upkeep and permanent maintenance of improvements constructed under R.C. Chapter 6131 and that the use of the funds was controlled by 6137.05, which restricted their use by the county commissioners to necessary and proper repair and/ or maintenance of improvements constructed under R.C. Chapter 6131. The Ohio Attorney General concluded that it would be inappropriate to use proceeds from a maintenance fund established under R.C. 6137.02 to pay an annual bonus to a county engineer employee since the payment of the employee bonus was not in any way related to the repair or maintenance of a ditch improvement.

In Ohio Atty. Gen. Ops. No. 89-104, a county that had fourteen waste water treatment plants that were maintained as separate "stand alone" accounts and that assessed different user rate fees envisioned consolidating the fourteen systems into one comprehensive operation under Chapter 6117. The Attorney General was asked whether the 14 separate funds could be consolidated into one fund despite the fact that some of the plants had outstanding indebtedness. The county also inquired as to whether a uniform rate could be assessed against all potential users for common charges. In concluding that the county could consolidate the various sewer districts into one county system, the Attorney General cautioned that certain restrictions may apply to the use of various moneys. The Attorney General stated that the county commissioners remained subject to the provisions of R.C. 5705.09, which required that special funds be maintained for the purposes specified, and further indicated that moneys collected pursuant to statutory provisions restricting their use to purposes of a particular sewer district remain subject to that restriction. The opinion then concluded that "where appropriate, steps may be taken to transfer moneys from one [county fund] pursuant to R.C. 5705.14 - .16 and in accordance with the procedures set forth therein. The transfer of funds pursuant to R.C. 5705.15 and 5705.16 requires a resolution passed by a majority of the members of the taxing



authority of the political subdivision, a petition to the court of common pleas and approval of the Tax Commissioner.” *Id.* at 2-510.

It appears from our review of the statutes and attorney general opinions set forth above, that under both R.C. Chapter 6117 and R.C. Chapter 6131, county commissioners are vested with the authority and the discretion to determine the means by which to implement comprehensive storm water drainage plans, systems and improvements for and within a county. Both Chapters set forth mechanisms by which a board of commissioners is empowered to operate and fund ditch and drainage systems for storm water purposes, such as by incurring debt, levying special assessments against landowners, setting up usage fees, and by maintaining funds from which to pay costs associated with the establishment and improvement of drainage facilities. Certain provisions in Chapters 6131 and 6117 appear to overlap in both purpose and effect. It is our opinion, as set forth below, that once a county-operated comprehensive storm water drainage utility plan, as contemplated by R.C. 6117, is implemented and functioning, there would be no need for the county to continue to maintain a separate drainage improvement fund under R.C. 6131.50 and/or a ditch maintenance fund pursuant to R.C. Chapter 6137, since moneys collected pursuant to the fees, charges, assessments and taxes authorized by Chapter 6117 (e.g., R.C. 6117.02(D), 6117.06 and 6117.251) would essentially incorporate the drainage improvement and maintenance objectives of R.C. 6131.50 and R.C. Chapter 6137.

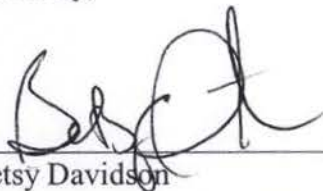
As noted above, transfers of money from one fund to another are limited by R.C. 5705.14 and 5705.15, and the procedures for transfers are laid out in R.C. 5705.16. R.C. 5705.14 authorizes transfers funds from special tax levies and for special bond issues, and specific permanent improvement funds and other designated funds within a subdivision when, broadly speaking, the purpose for which a special fund was created has terminated. The purpose for which the funds were created under 6131 - drainage improvement and maintenance - would not necessarily terminate, but instead would continue to exist, but under a different provision and fund. In Atty. Gen Op. No. 1964-960 it was opined that while a transfer of funds from the general improvement fund of R.C. 6131.50 to the general fund of a county was not permissible under R.C., 5705.14, such a transfer could be made under the authority of 5705.15, provided that such a transfer be made with the approval of the board of tax appeals and upon petition to the court of common pleas of the county in which the funds are held as mandated by R.C. 5705.16.

Accordingly, we are of the opinion that funds maintained under R.C. Chapter 6131 may be transferred for the costs associated with creating the envisioned county-wide drainage utility pursuant to the applicable provisions of R.C. 5705.15 and .16, provided that special funds be maintained for their specified purposes in accordance with R.C. 5705.09. We add that in order to avoid inequities, parcel owners that have been taxed, assessed and have paid fees pursuant to the transferred funds be given credit for such payments against future maintenance fees and/or assessments under the comprehensive scheme envisioned by R.C. Chapter 6117.

Please feel free to contact us if you have any questions.



Sincerely,

A handwritten signature in black ink, appearing to read 'Betsy Davidson', written over a horizontal line.

Betsy Davidson  
Assistant Prosecuting Attorney



## APPENDIX

R.C. Chapter 6117, as amended by House Bill 549 (effective March 1, 2001) grants counties the authority to establish county-operated sewer districts and corresponding drainage facilities. A board of county commissioners may lay out establish and maintain one or more sewer districts within a county and acquire, construct, operate and maintain within any district drainage facilities for the collection, control or abatement of waters originating or accumulating in, or flowing in, into, or through the district that the board determines to be necessary or appropriate for proper treatment, disposal and disposition. "Drainage" is defined by R.C.6117.01(A)(2) as "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. The definition of "drainage facility" is set forth in R.C. 6117.01(A)(3), and it provides a rather extensive list that encompasses, *inter alia*, storm sewers and facilities for the treatment, disposal, impoundment, retention and control of waters as well as improvements of or for channels and ditches, including construction, widening deepening and for facilities for controlled drainage for the protection of lands from the overflow of water.

R.C. 6117.01(E) states that no sanitary or drainage facilities shall be constructed until the plans and specifications have been approved by the county commissioners and that any construction relating thereto shall be overseen by the county "sanitary engineer." The county engineer may serve as the county sanitary engineer pursuant to R.C. 6117.01(A)(4) and (C) provided that the county engineer enters into an agreement with the commissioners pursuant to R.C. 315.14 to do so.

Once the board of commissioners determines to establish a sewer district, it may enter into contracts for the surveying of water supply, sanitary, or drainage facilities upon the adoption of a resolution declaring the purpose and necessity of the survey(s). See R.C. 6117.011.

R.C. 6117.02(D) provides that the board of commissioners may charge reasonable rates, including connection fees and late payment charges to 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. (Emphasis ours.) The board of county commissioners is also authorized to change the rates and charges from time to time as it considers advisable. The rates may be paid periodically as determined by the board except that any connection charges shall be paid in full in one payment unless the commissioners, by resolution, allow for installment payments for the connection fees. All monies collected as drainage rates and charges (and any penalty charges assessed for late or non payment thereof) is to be kept by the county treasurer in a separate and



distinct drainage fund established by the board to the credit of the district.

Money in the drainage fund is to be applied first to the payment of the cost of the management, maintenance, and operation of the drainage facilities of, or used or operated for, the district, and shall be applied second to the payment of debt charges payable on any outstanding public obligations issued or incurred for the acquisition or construction of drainage facilities for or serving the district or for the funding of a bond retirement or other fund established for the payment of or security for the obligations. Money in the drainage fund shall not be expended other than for the use and benefit of the district. Section (E) of R.C. 6117.02 allows a board of commissioners to adopt a cost allocation plan that identifies, accumulates and distributes allowable direct and indirect costs that may be paid from the drainage fund.

R.C. 6117.04 provides that the authority of a board of county commissioners to acquire, construct maintain and operate drainage facilities for a county sewer district in the territory of a municipal corporation, or a regional water and sewer district, that is in whole or in part within the county sewer district, is the same as provided by law with respect to territory within a county sewer district that is wholly outside a municipal corporation or regional district pursuant to R.C. Chapter 6119, except that in the case of facilities within a municipal corporation, the acquisition, construction, maintenance, and operation of the facilities first must be authorized by an ordinance or resolution of the legislative authority of the municipal corporation.

Under 6117.06, after the establishment of any sewer district, the county commissioners, if a sanitary or drainage facility improvement is to be undertaken, may have the county engineer prepare or otherwise cause to be prepared for the district a general plan of sewage or drainage that is as complete as can be developed at the time and that is devised with regard to any presently existing sewage or drainage facilities in the district as well as prospective needs for additional facilities. After a general plan of drainage has been approved by a board of county commissioners, the board may adopt a resolution generally describing the improvement in accordance with the particular plan and declaring that the drainage improvement is necessary for the public health and welfare. This resolution should state whether special assessments are to be levied and collected to fund any part of the cost of the improvement. If special assessments are not to be levied, the board may then grant clearance for the improvement through this resolution and may further authorize the issuance or incurrence of public obligations to fund the improvement.

If special assessments are to be levied pursuant to the commissioners' determination as stated in the resolution, certain procedures, including the issuance of several additional resolutions by the board of county commissioners, are to be followed. The county sanitary engineer (who, as we stated earlier, may be the county engineer) is to prepare detailed plans and specifications that include an estimate of the improvement cost together with a tentative assessment of the cost based on the initial cost estimate. The board of commissioners then must send notice, via first class mail, of its intent to adopt the resolution (and include the proposed date for its adoption of the resolution) to each owner of property proposed to be assessed that is listed on the records of the county auditor for current agricultural use value taxation pursuant to R.C. 5713.31 and that is not located in an agricultural district established under R.C. 929.02. The notice must state that the improvement is to be financed in whole or in part by special assessments and that all properties not located in an



agricultural district may be subject to the special assessment.

After complying with the above, the board may then adopt a resolution declaring that the improvement, which shall be described as to its nature and location, route and termini, is necessary for the preservation and promotion of the public health and welfare, with reference to the plans, specifications, estimate of cost, and tentative assessment, stating the place where they are on file and may be examined, and providing that the entire cost or a portion thereof will be specially assessed against the benefitted properties and that any balance will be paid by the county at large from other available funds. The resolution shall designate a time and place for the board to entertain objections to the improvement, to the tentative assessment plan, or to the boundaries of the assessment district. The date of such hearing shall not be less than twenty-four days after the date of the first publication of the notice of the hearing. The board is to publish a notice of the hearing in a newspaper of general circulation in the county once a week for two consecutive weeks. On or before the date of the second publication, the board is to send by first class or certified mail a copy of the notice to every known property owner to be assessed for the improvement. At the hearing, the board is to allow proposed assessed property owners an opportunity to be heard and shall allow for the receipt of, for a period of five days after the proceeding, written objections or endorsements concerning the improvement.

At the expiration of the five day period set forth above for the filing of written objections, the board shall determine whether to proceed with the construction of the proposed improvement. If it determines to proceed therewith, the board shall adopt a resolution to be known as the "improvement resolution," (R.C. 6117.07), and such resolution shall declare the determination of the board to proceed with the construction of the improvement provided for in the resolution of necessity, in accordance with the plans and specifications provided therewith, and shall state whether bonds or certificates of indebtedness shall be issued in anticipation of the collection of special assessments or whether that money in the county treasury unappropriated for any other purpose shall be appropriated to pay for said improvement. After the adoption of the "improvement resolution" the construction of the improvement shall be delayed until ten (10) days have elapsed. If at the expiration of that period no appeal has been taken, the action of the board of county commissioners shall be final and the board may proceed to issue or incur public obligations and construct the improvement. If an owner of property to be assessed effects an appeal within the ten day period, the construction of the improvement is to be deferred until the matters appealed from have been resolved by the county probate court.(R.C. 6117.09).

R.C. 6117.062 provides that a board of county commissioners may apply to the water and sewer commission for an advance of moneys from the water and sewer fund under R.C. 1525.11 in an amount equal to that portion of the costs of an improvement to be financed by assessments that have been successfully deferred by certain landowners under the provisions of 6117.062.

Under R.C. 6117.25, a board of county commissioners is authorized to pay all or any part of the cost of constructing, maintaining, repairing or operating any improvement provided for in Chapter 6117 and this provision further states that in the event that such expenses relate to the construction of permanent improvements, they may be considered as part of the cost of such improvement and bonds may be issued therefor.



Under R.C. 6117.251 the county commissioners may determine by resolution that it is necessary to provide drainage facility improvements for a county sewer district and to maintain and operate the improvements within the district or a designated portion of the district and that the funds with which to pay must be identified prior to the commencement of the improvement construction in accordance with R.C.6117.251. Prior to adopting such resolution the board is to provide notice of its pendency, within which it shall set forth a description of the properties to be benefitted by the improvement, and state the time and place for objections to be heard to the proposed improvements. The board shall then determine the necessity of the proposed improvements and shall direct the preparation of tentative assessments to be placed upon the benefitted properties. In order to obtain funds for the preparation of a general or revised general plan of sewerage or drainage for the district or part of the district, for the preparation of the detailed plans, specifications, estimate of cost, and tentative assessment for the proposed improvements, and for the cost of financing and legal services incident to the preparation of all of those plans and a plan of financing, the board may levy upon the properties to be benefitted in the district, a preliminary assessment apportioned according to benefits or to tax valuation or a combination of both. The assessments shall be in the amount determined by the board to be necessary and shall be payable in twenty years or less, together with any interest incurred by the issuance of public obligations executed in anticipation of the collection of the assessments. Prior to adopting a resolution levying these assessments, the board must provide notice of a hearing that is to be conducted for any objections 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 owners of the properties proposed to be assessed. Following the hearing, the board may adopt a resolution levying the assessments upon the properties and such assessments shall be certified to the county auditor for collection in the same manner as taxes in the year or years in which they are payable. Upon the adoption of the resolution, no work shall be commenced as to the improvement for ten days in order to allow for appeals by affected property owners. The board may issue and sell bonds with a maximum maturity of twenty years in anticipation of the collection of the assessments and may issue notes in anticipation of the bonds.

Under R.C. 6117.29 the costs of any improvement provided for in Chapter 6117 and the expenses incurred for its maintenance and operation shall include incidental expenses, such as the cost of engineering, the necessary publications and other similar expenses.

Under 6117.30 the cost of the acquisition or construction of sanitary or drainage facilities to be paid by assessments shall be assessed, as an assessment district, upon all the property within the county sewer district found to be benefitted 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.

R.C. 6117.31 provides that upon the completion of any improvement the actual cost thereof shall be ascertained and that to such actual cost shall be added an amount equal to the interest accrued and to accrue before the installment of such assessment is collected upon certificates of indebtedness and upon bonds and the sum so arising. Less the portion thereof to be paid by the county at large shall be assessed against the lots and parcels of land within the assessment district found to be benefitted by such improvement.



Under R.C. 6117.311 in order to pay all or any portion of the cost of any improvement in a sewer district created under 6117.01, the board of county commissioners is empowered to levy a tax under R.C. Chapter 5705 upon all the property listed and assessed for taxation in such sewer district and may authorize, issue, and execute bonds under the provisions of R.C. Chapter 133 for and on behalf of such sewer district as an indebtedness of such district payable from taxes which the board shall levy upon all of the property listed and assessed therein. Bonds are to issued only after a vote of the electors of such sewer district and the total net indebtedness created or incurred shall not exceed five (5) percent of the tax duplicate valuation of the district. The county sanitary engineer, upon completion of any improvement shall prepare and present to the board a revised assessment which reflects the actual costs of the improvement including the allowable incidental costs. If the actual costs exceeds the estimated costs the property owners shall be provided with notice and an opportunity to appeal, as was the case with the initial estimated/tentative assessment. The board may at intervals that it deems expedient, levy additional assessments on the lots and parcels of land assessed for the improvement in order to pay the cost of maintenance, repair and operation of the improvement after its completion. No further notice shall be necessary of this additional assessment unless the amount of it exceeds ten per cent of the original cost of acquiring or constructing the improvement.

6117.38 provides that any time after the formation of a county sewer district, the board of county commissioners, when it considers it appropriate, may, on application by a person or public agency located outside the district, contract with such person or agency for depositing sewage or drainage from those properties in facilities acquired or constructed or to be acquired or constructed by the county to serve the district and for the treatment, disposal and disposition for the sewage or drainage, on terms considered equitable by the board. The amount to be paid by the person or agency shall not be less than the original or comparable assessment for similar property within the district. Under this section, the board is also authorized to purchase drainage facilities or any part thereof from persons or agencies at a price that, after consultation with the county sanitary engineer, the board determines to be reasonable.

Under R.C. 6117.39, the board of commissioners is authorized to appropriate land by eminent domain for drainage facility purposes unless the real estate or personal property is owned by a municipal corporation.

Pursuant to R.C. 6117.41 the board may, at any time after the formation of any county sewer district, contract with any other public agency to prepare all necessary plans and estimates of cost and to acquire or construct any sanitary or drainage facilities that are to be used jointly by the contracting parties, and to provide for the maintenance, operation, and joint use by the parties of those facilities or existing facilities belonging to either of the contracting parties. The board may levy taxes or special assessments to pay for such contracts per 6117.43.

R.C. 6117.49 authorizes a board of county commissioners, if it determines by resolution that the best interests of the county and those served by the sanitary or drainage facilities of a county sewer district so require, to sell or otherwise dispose of the facilities to another public agency or person.

According to the provisions of R.C. Chapter 6131, upon the filing of a petition, a board of county



commissioners is to determine whether the construction of a ditch or drainage improvement is conducive to the public welfare and whether the cost of the proposed improvement will be less than the benefits conferred by its construction. (R.C. 6131.02.) An "improvement" for the purposes of Chapter 6131 includes, under 6131.01(C), the construction, reconstruction, widening, or any change in the course, location or terminus of any ditch, drain, watercourse or floodway. Upon finding in favor of a proposed drainage improvement, the board of county commissioners must order the county engineer to file a schedule of assessments containing an explanation of the benefit accruing to each tract of land affected by the proposed improvement. All lands specifically benefitted by a drainage improvement may be assessed for the cost of the improvement. R.C. 6131.15. Conversely, lands not specially benefitted are not assessable for any portion of such cost.

The right to assess the cost of drainage improvements upon the lands specifically benefitted by a drainage improvement has been justified as an exercise of the taxing power. Assessments levied against lands for the cost of a drainage improvement can be made only for special benefits resulting from the improvement. All land affected by an improvement is to be assessed in the proportion that it is specially benefitted by the improvement and not otherwise. R.C. 6131.15; 93 O Jur.3d Sections 342 and 417. That part of an assessment that is assessed for benefits to the general public by reason of the improvement being conducive to the general public welfare should be paid by the public and assessed against the county. R.C. 6131.22

Under R.C. 6131.50, each county must establish a general drainage improvement fund, which is to consist of taxes levied and collected for drainage purposes under county levies and not otherwise disposed of, the proceeds of all bonds issued and sold under the drainage laws, collections from all special assessments for benefits to property, and such other funds required to be paid into such by law. If obligations legally incurred by the fund exceed the amount of the improvement fund, the board of county commissioners may, by resolution, transfer from the general revenue fund in the county treasury an amount equal to the deficiency to the general ditch improvement fund. The amount allowed for compensation for property taken or damaged for improvements made pursuant to Chapter 6131 may be payable from the general ditch improvement fund. Moreover, under 6131.52, county commissioners may levy a tax under 5705.19(X) upon all properties listed and assessed for taxes within the county and any money collected therefrom shall be credited to the general drainage improvement fund for the county. The commissioners may also designate a portion of the county as a drainage improvement district and levy a tax within that district under R.C. 5705.19. The proceeds from a drainage improvement district levy are to be used for the construction and maintenance of the system of improvements within the drainage improvement district.

Under R.C. 6137.02 and .03, a board of county commissioners also must establish and maintain a ditch maintenance fund for the repair, upkeep and permanent maintenance of ditches constructed pursuant to R.C. 6131. The maintenance fund is to be maintained, as needed, by an assessment levied, not more often than once annually, upon the benefitted owners, as defined by R.C. 6131.01, apportioned on the basis of the estimated benefits for construction of the improvement. An assessment shall represent such a percentage of the estimated benefits as is estimated by the engineer and found adequate by the board to effect the purpose of maintaining the ditches, except at no time shall a maintenance fund have an unencumbered balance greater than 20 percent of all construction costs of the improvement. The minimum assessment shall be two dollars.



Pursuant to R.C. 6131.52, a board of county commissioners may adopt a resolution designating any part of the county as a drainage improvement district and levy a tax within the district under R.C. 5705.19. The proceeds generated by the levy are only to be used for the construction and maintenance of the system of drainage improvements within the drainage improvement district.

Under 6137.04, upon recommendation of the county engineer, a board of county commissioners may combine improvements within the same watershed into a drainage maintenance district, in which the maintenance assessment shall be the same percentage of original cost for each improvement to be maintained. In grouping improvements into drainage maintenance districts, the county engineer and the board of commissioners shall consider uniformity of topography and soil types so that improvements within the same district represent substantially the same maintenance problem and can be kept in proper repair at cost sufficiently uniform as to constitute no substantial inequity for any owners to be included in a district maintenance program. A maintenance district may include all or any part of a county.

R.C. 6137.05 states that the maintenance fund created under authority of R.C. 6137.01 shall be subject to the use of the board of county commissioners for the necessary and proper repair or maintenance of any improvement constructed under Chapter 6131.





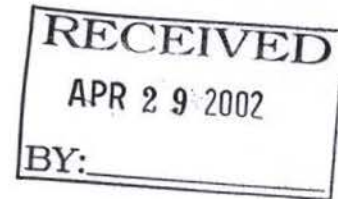
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April 25, 2002

Greg Wilkens  
Butler County Engineer  
1921 Fairgrove Avenue  
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Dear Greg:

You have asked this office for an opinion as to the mechanics of implementing and, primarily, of funding a storm water drainage utility pursuant to R.C. Chapter 6117 (as modified by House Bill 549) and establishing a fee structure for such an undertaking. Your office had also inquired in an earlier correspondence as to whether the county could transfer or loan money from the assessments collected and maintained pursuant to the "ditch improvement fund" under R.C. Chapter 6131 to assist with the "start-up" costs relating to the creation of a storm water utility.

We note at the outset that to provide a thorough understanding of the provisions of the Ohio Revised Code Chapters involved in your inquiry, we have attached to this opinion a detailed summary of the pertinent provisions of R.C. Chapter 6117, followed by a more cursory review of provisions in Chapters 6131 and 6137 (as it relates to Chapter 6131). We also note that our response is based on our understanding that the primary focus of your inquiry concerns identifying the funding options that are available for the various stages involved in creating and operating a storm water drainage utility, i.e., the preliminary planning stage, the construction/acquisition phase and the ongoing maintenance aspects.

Effective March 1, 2001, House Bill 549 amended R.C. Chapter 6117 so as to include "drainage facilities" as part of county sewer district(s). Thus, under R.C. Chapter 6117, a board of county commissioners is vested with authority to lay out, establish and maintain one or more sewer districts within a county and, in so doing, to acquire, construct and maintain within any such district sanitary facilities (for the collection of waste storage, disposal and treatment) and drainage facilities (for the collection and control of storm waters). R.C. Chapter 6117 provides the board with several methods by which to finance the process of creating and operating these drainage facilities.

Upon adopting a resolution declaring the necessity thereof, a board of county commissioners may have preliminary surveys prepared relating to drainage issues for any sewer district that the board is considering constructing or acquiring. Authorized surveys include drawings, plans, specifications,



estimates of costs for labor and materials and, essentially, any other material or information that the board, in its discretion, considers necessary or advisable. Any contract entered into for the surveys shall be considered contracts for professional services and may be paid for from the county's general fund or any other fund legally available. Moreover, the proceeds of any public obligations issued or incurred to pay the costs of facilities to which a survey relates may be used to pay any part of the cost under the contracts or to reimburse the fund from which payment was made.

Once a board of commissioners establishes a sewer district and determines to undertake a drainage facility within the district, the board of commissioners may have the county sanitary engineer (or the county engineer, pursuant to agreement) prepare (or cause to be prepared) a general, but comprehensive, plan of drainage that includes prospective needs for additional drainage facilities in the district. The board may levy upon the properties to be benefitted in the district a preliminary assessment apportioned according to the benefits or tax valuation or a combination of both in order to obtain funds for the preparation of the plans, specifications, cost estimates, legal services, tentative assessment bases and other preliminary costs for the drainage improvement.

A board of county commissioners may determine to levy special assessments to pay any part of the acquisition or construction costs for a drainage improvement (which then requires the board to provide notice and a hearing to potentially affected landowners). The board may also authorize by resolution the issuance or incurrence of public obligations for the payment of any portion of expenditures relating to the acquisition or construction of the planned drainage improvement. Moreover, a board is authorized, in order to pay all or any portion of the cost of a drainage improvement, to levy a tax under R.C. Chapter 5705 upon all the property listed and assessed for taxation and may issue and execute bonds for and on behalf of the sewer district, subject to approval by a vote of the electors of the sewer district. The costs of the improvement could also be paid from any available county funds.

In order to maintain the drainage facilities, a board of county commissioners is authorized to set reasonable rates and charges, including connection charges and penalties for late payments, to be paid by any person or public agency owning or having possession or control of any properties that are connected with or capable of being served by county drainage facilities.

Under R.C. Chapter 6131, boards of county commissioners are also vested with the authority to undertake the construction of drainage improvements. Each county is required to establish a "general drainage improvement fund," which consist of taxes levied and collected for drainage purposes under county levies and not otherwise disposed of, the proceeds of all bonds issued and sold under the drainage laws, collections from all special assessments for benefits to property and other such funds required to be paid into such by law, and a "ditch maintenance fund," which is comprised of monies collected from annual assessments levied against benefitted owners.

You have asked us whether the county may transfer or otherwise utilize the money collected and maintained pursuant to R.C. Chapter 6131 to assist with the costs related to creating a storm water utility under R.C. Chapter 6117.



R.C. 5705.09 establishes the various funds in which county tax dollars are to be kept: a general fund; a sinking fund whenever the subdivision/county has outstanding bonds other than serial bonds; a bond retirement fund for the retirement of serial bonds, notes or certificates of indebtedness; a special fund for each special levy; a special fund for each bond issue; a special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be made for a particular purpose; a special fund for each public utility operated by a subdivision; and, a trust fund for any amount received in trust. Pursuant to R.C. 5705.10 and Ohio Const. Art. XII, section 5, all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose, and every law imposing a tax shall state, distinctly, the purpose for which the levy was made, and the monies collected thereunder shall be applied to that purpose. Transfers of money from one fund to another are limited by R.C. 5705.14 and 5705.15, and the procedures for transfers are laid out in R.C. 5705.16, which requires a resolution by the board of county commissioners, a petition to the court of common pleas and approval by the tax commissioner.

In Ohio Atty. Gen. Ops. No. 92-049, the Ohio Attorney General Office was asked whether the proceeds of a maintenance fund established pursuant to R.C. 6137.02 could be used to pay an annual bonus to an employee of the county engineer's office. The Attorney General stated that the purpose for the maintenance funds established by counties pursuant to R.C. 6137.02 was for the repair, upkeep and permanent maintenance of improvements constructed under R.C. Chapter 6131 and that the use of the funds was controlled by 6137.05, which restricted their use by the county commissioners to necessary and proper repair and/or maintenance of improvements constructed under R.C. Chapter 6131. The Ohio Attorney General concluded that it would be inappropriate to use proceeds from a maintenance fund established under R.C. 6137.02 to pay an annual bonus to a county engineer employee since the payment of the employee bonus was not in any way related to the repair or maintenance of a ditch improvement.

In Ohio Atty. Gen. Ops. No. 89-104, a county that had fourteen waste water treatment plants that were maintained as separate "stand alone" accounts and that assessed different user rate fees envisioned consolidating the fourteen systems into one comprehensive operation under Chapter 6117. The Attorney General was asked whether the 14 separate funds could be consolidated into one fund despite the fact that some of the plants had outstanding indebtedness. The county also inquired as to whether a uniform rate could be assessed against all potential users for common charges. In concluding that the county could consolidate the various sewer districts into one county system, the Attorney General cautioned that certain restrictions may apply to the use of various moneys. The Attorney General stated that the county commissioners remained subject to the provisions of R.C. 5705.09, which required that special funds be maintained for the purposes specified, and further indicated that moneys collected pursuant to statutory provisions restricting their use to purposes of a particular sewer district remain subject to that restriction. The opinion then concluded that "where appropriate, steps may be taken to transfer moneys from one [county fund] pursuant to R.C. 5705.14 - .16 and in accordance with the procedures set forth therein. The transfer of funds pursuant to R.C. 5705.15 and 5705.16 requires a resolution passed by a majority of the members of the taxing



authority of the political subdivision, a petition to the court of common pleas and approval of the Tax Commissioner.” *Id.* at 2-510.

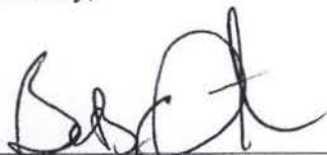
It appears from our review of the statutes and attorney general opinions set forth above, that under both R.C. Chapter 6117 and R.C. Chapter 6131, county commissioners are vested with the authority and the discretion to determine the means by which to implement comprehensive storm water drainage plans, systems and improvements for and within a county. Both Chapters set forth mechanisms by which a board of commissioners is empowered to operate and fund ditch and drainage systems for storm water purposes, such as by incurring debt, levying special assessments against landowners, setting up usage fees, and by maintaining funds from which to pay costs associated with the establishment and improvement of drainage facilities. Certain provisions in Chapters 6131 and 6117 appear to overlap in both purpose and effect. It is our opinion, as set forth below, that once a county-operated comprehensive storm water drainage utility plan, as contemplated by R.C. 6117, is implemented and functioning, there would be no need for the county to continue to maintain a separate drainage improvement fund under R.C. 6131.50 and/or a ditch maintenance fund pursuant to R.C. Chapter 6137, since moneys collected pursuant to the fees, charges, assessments and taxes authorized by Chapter 6117 (e.g., R.C. 6117.02(D), 6117.06 and 6117.251) would essentially incorporate the drainage improvement and maintenance objectives of R.C. 6131.50 and R.C. Chapter 6137.

As noted above, transfers of money from one fund to another are limited by R.C. 5705.14 and 5705.15, and the procedures for transfers are laid out in R.C. 5705.16. R.C. 5705.14 authorizes transfers funds from special tax levies and for special bond issues, and specific permanent improvement funds and other designated funds within a subdivision when, broadly speaking, the purpose for which a special fund was created has terminated. The purpose for which the funds were created under 6131 - drainage improvement and maintenance - would not necessarily terminate, but instead would continue to exist, but under a different provision and fund. In Atty. Gen Op. No. 1964-960 it was opined that while a transfer of funds from the general improvement fund of R.C. 6131.50 to the general fund of a county was not permissible under R.C., 5705.14, such a transfer could be made under the authority of 5705.15, provided that such a transfer be made with the approval of the board of tax appeals and upon petition to the court of common pleas of the county in which the funds are held as mandated by R.C. 5705.16.

Accordingly, we are of the opinion that funds maintained under R.C. Chapter 6131 may be transferred for the costs associated with creating the envisioned county-wide drainage utility pursuant to the applicable provisions of R.C. 5705.15 and .16, provided that special funds be maintained for their specified purposes in accordance with R.C. 5705.09. We add that in order to avoid inequities, parcel owners that have been taxed, assessed and have paid fees pursuant to the transferred funds be given credit for such payments against future maintenance fees and/or assessments under the comprehensive scheme envisioned by R.C. Chapter 6117.

Please feel free to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Betsy Davidson', written over a horizontal line.

Betsy Davidson  
Assistant Prosecuting Attorney



## APPENDIX

R.C. Chapter 6117, as amended by House Bill 549 (effective March 1, 2001) grants counties the authority to establish county-operated sewer districts and corresponding drainage facilities. A board of county commissioners may lay out establish and maintain one or more sewer districts within a county and acquire, construct, operate and maintain within any district drainage facilities for the collection, control or abatement of waters originating or accumulating in, or flowing in, into, or through the district that the board determines to be necessary or appropriate for proper treatment, disposal and disposition. "Drainage" is defined by R.C.6117.01(A)(2) as "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. The definition of "drainage facility" is set forth in R.C. 6117.01(A)(3), and it provides a rather extensive list that encompasses, *inter alia*, storm sewers and facilities for the treatment, disposal, impoundment, retention and control of waters as well as improvements of or for channels and ditches, including construction, widening deepening and for facilities for controlled drainage for the protection of lands from the overflow of water.

R.C. 6117.01(E) states that no sanitary or drainage facilities shall be constructed until the plans and specifications have been approved by the county commissioners and that any construction relating thereto shall be overseen by the county "sanitary engineer." The county engineer may serve as the county sanitary engineer pursuant to R.C. 6117.01(A)(4) and (C) provided that the county engineer enters into an agreement with the commissioners pursuant to R.C. 315.14 to do so.

Once the board of commissioners determines to establish a sewer district, it may enter into contracts for the surveying of water supply, sanitary, or drainage facilities upon the adoption of a resolution declaring the purpose and necessity of the survey(s). See R.C. 6117.011.

R.C. 6117.02(D) provides that the board of commissioners may charge reasonable rates, including connection fees and late payment charges to 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. (Emphasis ours.) The board of county commissioners is also authorized to change the rates and charges from time to time as it considers advisable. The rates may be paid periodically as determined by the board except that any connection charges shall be paid in full in one payment unless the commissioners, by resolution, allow for installment payments for the connection fees. All monies collected as drainage rates and charges (and any penalty charges assessed for late or non payment thereof) is to be kept by the county treasurer in a separate and



distinct drainage fund established by the board to the credit of the district.

Money in the drainage fund is to be applied first to the payment of the cost of the management, maintenance, and operation of the drainage facilities of, or used or operated for, the district, and shall be applied second to the payment of debt charges payable on any outstanding public obligations issued or incurred for the acquisition or construction of drainage facilities for or serving the district or for the funding of a bond retirement or other fund established for the payment of or security for the obligations. Money in the drainage fund shall not be expended other than for the use and benefit of the district. Section (E) of R.C. 6117.02 allows a board of commissioners to adopt a cost allocation plan that identifies, accumulates and distributes allowable direct and indirect costs that may be paid from the drainage fund.

R.C. 6117.04 provides that the authority of a board of county commissioners to acquire, construct maintain and operate drainage facilities for a county sewer district in the territory of a municipal corporation, or a regional water and sewer district, that is in whole or in part within the county sewer district, is the same as provided by law with respect to territory within a county sewer district that is wholly outside a municipal corporation or regional district pursuant to R.C. Chapter 6119, except that in the case of facilities within a municipal corporation, the acquisition, construction, maintenance, and operation of the facilities first must be authorized by an ordinance or resolution of the legislative authority of the municipal corporation.

Under 6117.06, after the establishment of any sewer district, the county commissioners, if a sanitary or drainage facility improvement is to be undertaken, may have the county engineer prepare or otherwise cause to be prepared for the district a general plan of sewage or drainage that is as complete as can be developed at the time and that is devised with regard to any presently existing sewage or drainage facilities in the district as well as prospective needs for additional facilities. After a general plan of drainage has been approved by a board of county commissioners, the board may adopt a resolution generally describing the improvement in accordance with the particular plan and declaring that the drainage improvement is necessary for the public health and welfare. This resolution should state whether special assessments are to be levied and collected to fund any part of the cost of the improvement. If special assessments are not to be levied, the board may then grant clearance for the improvement through this resolution and may further authorize the issuance or incurrence of public obligations to fund the improvement.

If special assessments are to be levied pursuant to the commissioners' determination as stated in the resolution, certain procedures, including the issuance of several additional resolutions by the board of county commissioners, are to be followed. The county sanitary engineer (who, as we stated earlier, may be the county engineer) is to prepare detailed plans and specifications that include an estimate of the improvement cost together with a tentative assessment of the cost based on the initial cost estimate. The board of commissioners then must send notice, via first class mail, of its intent to adopt the resolution (and include the proposed date for its adoption of the resolution) to each owner of property proposed to be assessed that is listed on the records of the county auditor for current agricultural use value taxation pursuant to R.C. 5713.31 and that is not located in an agricultural district established under R.C. 929.02. The notice must state that the improvement is to be financed in whole or in part by special assessments and that all properties not located in an



agricultural district may be subject to the special assessment.

After complying with the above, the board may then adopt a resolution declaring that the improvement, which shall be described as to its nature and location, route and termini, is necessary for the preservation and promotion of the public health and welfare, with reference to the plans, specifications, estimate of cost, and tentative assessment, stating the place where they are on file and may be examined, and providing that the entire cost or a portion thereof will be specially assessed against the benefitted properties and that any balance will be paid by the county at large from other available funds. The resolution shall designate a time and place for the board to entertain objections to the improvement, to the tentative assessment plan, or to the boundaries of the assessment district. The date of such hearing shall not be less than twenty-four days after the date of the first publication of the notice of the hearing. The board is to publish a notice of the hearing in a newspaper of general circulation in the county once a week for two consecutive weeks. On or before the date of the second publication, the board is to send by first class or certified mail a copy of the notice to every known property owner to be assessed for the improvement. At the hearing, the board is to allow proposed assessed property owners an opportunity to be heard and shall allow for the receipt of, for a period of five days after the proceeding, written objections or endorsements concerning the improvement.

At the expiration of the five day period set forth above for the filing of written objections, the board shall determine whether to proceed with the construction of the proposed improvement. If it determines to proceed therewith, the board shall adopt a resolution to be known as the "improvement resolution," (R.C. 6117.07), and such resolution shall declare the determination of the board to proceed with the construction of the improvement provided for in the resolution of necessity, in accordance with the plans and specifications provided therewith, and shall state whether bonds or certificates of indebtedness shall be issued in anticipation of the collection of special assessments or whether that money in the county treasury unappropriated for any other purpose shall be appropriated to pay for said improvement. After the adoption of the "improvement resolution" the construction of the improvement shall be delayed until ten (10) days have elapsed. If at the expiration of that period no appeal has been taken, the action of the board of county commissioners shall be final and the board may proceed to issue or incur public obligations and construct the improvement. If an owner of property to be assessed effects an appeal within the ten day period, the construction of the improvement is to be deferred until the matters appealed from have been resolved by the county probate court.(R.C. 6117.09).

R.C. 6117.062 provides that a board of county commissioners may apply to the water and sewer commission for an advance of moneys from the water and sewer fund under R.C. 1525.11 in an amount equal to that portion of the costs of an improvement to be financed by assessments that have been successfully deferred by certain landowners under the provisions of 6117.062.

Under R.C. 6117.25, a board of county commissioners is authorized to pay all or any part of the cost of constructing, maintaining, repairing or operating any improvement provided for in Chapter 6117 and this provision further states that in the event that such expenses relate to the construction of permanent improvements, they may be considered as part of the cost of such improvement and bonds may be issued therefor.



Under R.C. 6117.251 the county commissioners may determine by resolution that it is necessary to provide drainage facility improvements for a county sewer district and to maintain and operate the improvements within the district or a designated portion of the district and that the funds with which to pay must be identified prior to the commencement of the improvement construction in accordance with R.C.6117.251. Prior to adopting such resolution the board is to provide notice of its pendency, within which it shall set forth a description of the properties to be benefitted by the improvement, and state the time and place for objections to be heard to the proposed improvements. The board shall then determine the necessity of the proposed improvements and shall direct the preparation of tentative assessments to be placed upon the benefitted properties. In order to obtain funds for the preparation of a general or revised general plan of sewerage or drainage for the district or part of the district, for the preparation of the detailed plans, specifications, estimate of cost, and tentative assessment for the proposed improvements, and for the cost of financing and legal services incident to the preparation of all of those plans and a plan of financing, the board may levy upon the properties to be benefitted in the district, a preliminary assessment apportioned according to benefits or to tax valuation or a combination of both. The assessments shall be in the amount determined by the board to be necessary and shall be payable in twenty years or less, together with any interest incurred by the issuance of public obligations executed in anticipation of the collection of the assessments. Prior to adopting a resolution levying these assessments, the board must provide notice of a hearing that is to be conducted for any objections 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 owners of the properties proposed to be assessed. Following the hearing, the board may adopt a resolution levying the assessments upon the properties and such assessments shall be certified to the county auditor for collection in the same manner as taxes in the year or years in which they are payable. Upon the adoption of the resolution, no work shall be commenced as to the improvement for ten days in order to allow for appeals by affected property owners. The board may issue and sell bonds with a maximum maturity of twenty years in anticipation of the collection of the assessments and may issue notes in anticipation of the bonds.

Under R.C. 6117.29 the costs of any improvement provided for in Chapter 6117 and the expenses incurred for its maintenance and operation shall include incidental expenses, such as the cost of engineering, the necessary publications and other similar expenses.

Under 6117.30 the cost of the acquisition or construction of sanitary or drainage facilities to be paid by assessments shall be assessed, as an assessment district, upon all the property within the county sewer district found to be benefitted 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.

R.C. 6117.31 provides that upon the completion of any improvement the actual cost thereof shall be ascertained and that to such actual cost shall be added an amount equal to the interest accrued and to accrue before the installment of such assessment is collected upon certificates of indebtedness and upon bonds and the sum so arising. Less the portion thereof to be paid by the county at large shall be assessed against the lots and parcels of land within the assessment district found to be benefitted by such improvement.



Under R.C. 6117.311 in order to pay all or any portion of the cost of any improvement in a sewer district created under 6117.01, the board of county commissioners is empowered to levy a tax under R.C. Chapter 5705 upon all the property listed and assessed for taxation in such sewer district and may authorize, issue, and execute bonds under the provisions of R.C. Chapter 133 for and on behalf of such sewer district as an indebtedness of such district payable from taxes which the board shall levy upon all of the property listed and assessed therein. Bonds are to be issued only after a vote of the electors of such sewer district and the total net indebtedness created or incurred shall not exceed five (5) percent of the tax duplicate valuation of the district. The county sanitary engineer, upon completion of any improvement shall prepare and present to the board a revised assessment which reflects the actual costs of the improvement including the allowable incidental costs. If the actual costs exceed the estimated costs the property owners shall be provided with notice and an opportunity to appeal, as was the case with the initial estimated/tentative assessment. The board may at intervals that it deems expedient, levy additional assessments on the lots and parcels of land assessed for the improvement in order to pay the cost of maintenance, repair and operation of the improvement after its completion. No further notice shall be necessary of this additional assessment unless the amount of it exceeds ten per cent of the original cost of acquiring or constructing the improvement.

6117.38 provides that any time after the formation of a county sewer district, the board of county commissioners, when it considers it appropriate, may, on application by a person or public agency located outside the district, contract with such person or agency for depositing sewage or drainage from those properties in facilities acquired or constructed or to be acquired or constructed by the county to serve the district and for the treatment, disposal and disposition for the sewage or drainage, on terms considered equitable by the board. The amount to be paid by the person or agency shall not be less than the original or comparable assessment for similar property within the district. Under this section, the board is also authorized to purchase drainage facilities or any part thereof from persons or agencies at a price that, after consultation with the county sanitary engineer, the board determines to be reasonable.

Under R.C. 6117.39, the board of commissioners is authorized to appropriate land by eminent domain for drainage facility purposes unless the real estate or personal property is owned by a municipal corporation.

Pursuant to R.C. 6117.41 the board may, at any time after the formation of any county sewer district, contract with any other public agency to prepare all necessary plans and estimates of cost and to acquire or construct any sanitary or drainage facilities that are to be used jointly by the contracting parties, and to provide for the maintenance, operation, and joint use by the parties of those facilities or existing facilities belonging to either of the contracting parties. The board may levy taxes or special assessments to pay for such contracts per 6117.43.

R.C. 6117.49 authorizes a board of county commissioners, if it determines by resolution that the best interests of the county and those served by the sanitary or drainage facilities of a county sewer district so require, to sell or otherwise dispose of the facilities to another public agency or person.

According to the provisions of R.C. Chapter 6131, upon the filing of a petition, a board of county



commissioners is to determine whether the construction of a ditch or drainage improvement is conducive to the public welfare and whether the cost of the proposed improvement will be less than the benefits conferred by its construction. (R.C. 6131.02.) An "improvement" for the purposes of Chapter 6131 includes, under 6131.01(C), the construction, reconstruction, widening, or any change in the course, location or terminus of any ditch, drain, watercourse or floodway. Upon finding in favor of a proposed drainage improvement, the board of county commissioners must order the county engineer to file a schedule of assessments containing an explanation of the benefit accruing to each tract of land affected by the proposed improvement. All lands specifically benefitted by a drainage improvement may be assessed for the cost of the improvement. R.C. 6131.15. Conversely, lands not specially benefitted are not assessable for any portion of such cost.

The right to assess the cost of drainage improvements upon the lands specifically benefitted by a drainage improvement has been justified as an exercise of the taxing power. Assessments levied against lands for the cost of a drainage improvement can be made only for special benefits resulting from the improvement. All land affected by an improvement is to be assessed in the proportion that it is specially benefitted by the improvement and not otherwise. R.C. 6131.15; 93 O Jur.3d Sections 342 and 417. That part of an assessment that is assessed for benefits to the general public by reason of the improvement being conducive to the general public welfare should be paid by the public and assessed against the county. R.C. 6131.22

Under R.C. 6131.50, each county must establish a general drainage improvement fund, which is to consist of taxes levied and collected for drainage purposes under county levies and not otherwise disposed of, the proceeds of all bonds issued and sold under the drainage laws, collections from all special assessments for benefits to property, and such other funds required to be paid into such by law. If obligations legally incurred by the fund exceed the amount of the improvement fund, the board of county commissioners may, by resolution, transfer from the general revenue fund in the county treasury an amount equal to the deficiency to the general ditch improvement fund. The amount allowed for compensation for property taken or damaged for improvements made pursuant to Chapter 6131 may be payable from the general ditch improvement fund. Moreover, under 6131.52, county commissioners may levy a tax under 5705.19(X) upon all properties listed and assessed for taxes within the county and any money collected therefrom shall be credited to the general drainage improvement fund for the county. The commissioners may also designate a portion of the county as a drainage improvement district and levy a tax within that district under R.C. 5705.19. The proceeds from a drainage improvement district levy are to be used for the construction and maintenance of the system of improvements within the drainage improvement district.

Under R.C. 6137.02 and .03, a board of county commissioners also must establish and maintain a ditch maintenance fund for the repair, upkeep and permanent maintenance of ditches constructed pursuant to R.C. 6131. The maintenance fund is to be maintained, as needed, by an assessment levied, not more often than once annually, upon the benefitted owners, as defined by R.C. 6131.01, apportioned on the basis of the estimated benefits for construction of the improvement. An assessment shall represent such a percentage of the estimated benefits as is estimated by the engineer and found adequate by the board to effect the purpose of maintaining the ditches, except at no time shall a maintenance fund have an unencumbered balance greater than 20 percent of all construction costs of the improvement. The minimum assessment shall be two dollars.



Pursuant to R.C. 6131.52, a board of county commissioners may adopt a resolution designating any part of the county as a drainage improvement district and levy a tax within the district under R.C. 5705.19. The proceeds generated by the levy are only to be used for the construction and maintenance of the system of drainage improvements within the drainage improvement district.

Under 6137.04, upon recommendation of the county engineer, a board of county commissioners may combine improvements within the same watershed into a drainage maintenance district, in which the maintenance assessment shall be the same percentage of original cost for each improvement to be maintained. In grouping improvements into drainage maintenance districts, the county engineer and the board of commissioners shall consider uniformity of topography and soil types so that improvements within the same district represent substantially the same maintenance problem and can be kept in proper repair at cost sufficiently uniform as to constitute no substantial inequity for any owners to be included in a district maintenance program. A maintenance district may include all or any part of a county.

R.C. 6137.05 states that the maintenance fund created under authority of R.C. 6137.01 shall be subject to the use of the board of county commissioners for the necessary and proper repair or maintenance of any improvement constructed under Chapter 6131.



**§ 6117.01** County may establish sewer district or districts; sanitary or drainage facilities; county sanitary engineer and department; rules.

#### Text of Statute

(A) As used in this chapter:

(1) "Sanitary facilities" means 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.

(2) "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.

(3) "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.

(4) "County sanitary engineer" means either of the following:

(a) The registered professional engineer employed or appointed by the board of county commissioners to be the county sanitary engineer as provided in section 6117.01 of the Revised Code;

(b) The county engineer, if, for as long as and to the extent that engineer by agreement entered into under section 315.14 of the Revised Code is retained to discharge duties of a county sanitary engineer under this chapter.

(5) "Current operating expenses," "debt charges," "permanent improvement," "public obligations," and "subdivision" have the same meanings as in section 133.01 of the Revised Code.

(6) "Construct," "construction," or "constructing" means construction, reconstruction, enlargement, extension, improvement, renovation, repair, and replacement of sanitary or drainage facilities, but does not include any repairs, replacements, or similar actions that do not constitute and qualify as permanent improvements.

(7) "Maintain," "maintaining," or "maintenance" means repairs, replacements, and similar actions that constitute and are payable as current operating expenses and that are required to restore sanitary or drainage facilities to, or to continue sanitary or drainage facilities in, good order and working condition, but does not include construction of permanent improvements.

(8) "Public agency" means a state and any agency or subdivision of a state, including a county, a municipal corporation, or other subdivision.

(B) For the purpose of preserving and promoting the public health and welfare, a board of county commissioners may lay out, establish, consolidate, or otherwise modify the boundaries of, and maintain, one or more sewer districts within the county and outside municipal corporations and may have a registered professional engineer make the surveys necessary for the determination of the proper boundaries of each district, which shall be designated by an appropriate name or number. The board may acquire, construct, maintain, and operate within any district sanitary or drainage facilities that it determines to be necessary or appropriate for the collection of sewage and other wastes originating in or entering the district, to comply with the provisions of a contract entered into for the purposes described in sections 6117.41 to 6117.44 of the Revised Code and pursuant to those sections or other applicable provisions of law, or for the collection, control, or abatement of waters originating or accumulating in, or flowing in, into, or through, the district, and other sanitary or drainage facilities, within or outside of the district, that it determines to be necessary or appropriate to conduct the wastes and waters to a proper outlet and to provide for their proper treatment, disposal, and disposition. The board may provide for the protection of the sanitary and drainage facilities and may negotiate and enter into a contract with any public agency or person for the management, maintenance, operation, and repair of any of the facilities on behalf of the county upon the terms and conditions that may be agreed upon with the agency or person and that may be determined by the board to be in the best interests of the county. By contract with any public agency or person operating sanitary or drainage facilities within or outside of the county, the board may provide a proper outlet for any of the wastes and waters and for their proper treatment, disposal, and disposition.



(C) The board of county commissioners may employ a registered professional engineer to be the county sanitary engineer for the time and on the terms it considers best and may authorize the county sanitary engineer to employ necessary assistants upon the terms fixed by the board. Prior to the initial assignment of drainage facilities duties to the county sanitary engineer, if the county sanitary engineer is not the county engineer, the board first shall offer to enter into an agreement with the county engineer pursuant to section 315.14 of the Revised Code for assistance in the performance of those duties of the board pertaining to drainage facilities, and the county engineer shall accept or reject the offer within thirty days after the date the offer is made.

The board may create and maintain a sanitary engineering department, which shall be under its supervision and which shall be headed by the county sanitary engineer, for the purpose of aiding it in the performance of its duties under this chapter and Chapter 6103. of the Revised Code or its other duties regarding sanitation, drainage, and water supply provided by law. The board shall provide suitable facilities for the use of the department and shall provide for and pay the compensation of the county sanitary engineer and all authorized necessary expenses of the county sanitary engineer and the sanitary engineering department. The county sanitary engineer, with the approval of the board, may appoint necessary assistants and clerks, and the compensation of those assistants and clerks shall be provided for and paid by the board.

(D) The board of county commissioners may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of county-owned or county-operated sanitary and drainage facilities outside municipal corporations, and of sanitary and drainage facilities within municipal corporations that are owned or operated by the county or that discharge into sanitary or drainage facilities owned or operated by the county, including, but not limited to, rules for the establishment and use of any connections, the termination in accordance with reasonable procedures of sanitary service for the nonpayment of county sanitary rates and charges and, if so determined, the concurrent termination of any county water service for the nonpayment of those rates and charges, the termination in accordance with reasonable procedures of drainage service for the nonpayment of county drainage rates and charges, and the establishment and use of security deposits to the extent considered necessary to ensure the payment of county sanitary or drainage rates and charges. The rules shall not be inconsistent with the laws of this state or any applicable rules of the director of environmental protection.

(E) No sanitary or drainage facilities shall be constructed in any county outside municipal corporations by any person until the plans and specifications have been approved by the board of county commissioners, and any construction shall be done under the supervision of the county sanitary engineer. Not less than thirty days before the date drainage plans are submitted to the board for its approval, the plans shall be submitted to the county engineer. If the county engineer is of the opinion after review that the facilities will have a significant adverse effect on roads, culverts, bridges, or existing maintenance within the county, the county engineer may submit a written opinion to the board not later than thirty days after the date the plans are submitted to the county engineer. The board may take action relative to the drainage plans only after the earliest of receiving the written opinion of the county engineer, receiving a written waiver of submission of an opinion from the county engineer, or passage of thirty days from the date the plans are submitted to the county engineer. Any person constructing the facilities shall pay to the county all expenses incurred by the board in connection with the construction.

(F) The county sanitary engineer or the county sanitary engineer's authorized assistants or agents, when properly identified in writing or otherwise and after written notice is delivered to the owner at least five days in advance or is mailed at least five days in advance by first class or certified mail to the owner's tax mailing address, may enter upon any public or private property for the purpose of making, and may make, surveys or inspections necessary for the laying out of sewer districts or the design or evaluation of county sanitary or drainage facilities. This entry is not a trespass and is not to be considered an entry in connection with any appropriation of property proceedings under sections 163.01 to 163.22 of the Revised Code that may be pending. No person or public agency shall forbid the county sanitary engineer or the county sanitary engineer's authorized assistants or agents to enter, or interfere with their entry, upon the property for that purpose or forbid or interfere with their making of surveys or inspections. If actual damage is done to property by the making of the surveys and inspections, the board shall pay the reasonable value of the damage to the property owner, and the cost shall be included in the cost of the facilities and may be included in any special assessments to be levied and collected to pay that cost.

HISTORY: GC § 6602-1; 107 v 440; 108 v PtI, 368; 110 v 392; 112 v 275; 123 v 441; Bureau of Code Revision, 10-1-53; 127 v 622 (Eff 9-17-57); 133 v H 151 (Eff 9-25-69); 134 v S 397 (Eff 10-23-72); 136 v H 367 (Eff 10-24-75); 140 v H 551 (Eff 9-21-84); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**[§ 6117.01.1] § 6117.011 Surveys of** water supply, sanitary or drainage facilities.

#### **Text of Statute**

A board of county commissioners in the manner provided in this section may make surveys of water supply, sanitary, or drainage facilities for any sewer district, the acquisition or construction of which is contemplated.

Any board desiring to make a survey shall adopt a resolution declaring its purpose and necessity. In making the surveys, the board may call upon engineering officers or employees regularly employed by the board or may authorize and enter into contracts for the services of registered professional engineers to make the surveys.



The surveys authorized by this section may include drawings, plans, specifications, estimates of cost of labor and materials, other items of cost, assessment rolls, and other facts, material, data, reports, and information and recommendations that the board considers advisable or necessary for the purpose.

Contracts entered into for the surveys shall be considered contracts for professional services and may provide for preliminary surveys or the making of detailed plans, or both, and also may provide for engineering supervision of the work. No contract shall be valid unless one or more of the services to be performed are by its terms to be commenced within one year after the contract date.

The contracts shall be signed by at least two members of the board and by the engineer agreeing to perform the service, and one signed copy of the contract shall be filed with the fiscal officer of the county, whose certificate, otherwise required by section 5705.41 of the Revised Code, need not be provided. Payment for the contracts may be made from the general fund or any other fund legally available for that use at the times that are agreed upon or as determined by the board. The proceeds of any public obligations issued pursuant to section 6119.36 of the Revised Code or any other public obligations issued or incurred to pay the cost of facilities to which a survey relates may be used to pay any part of the cost under the contracts or to reimburse the fund from which payment was made.

HISTORY: 130 v 1404 (Eff 9-24-63); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**[§ 6117.01.2] § 6117.012 Disconnection and reconnection or relocation of improper influence into sewers.**

**Text of Statute**

(A) A board of county commissioners may adopt rules requiring owners of property within the district whose property is served by a connection to sewers maintained and operated by the board or to sewers that are connected to interceptor sewers maintained and operated by the board to:

(1) Disconnect stormwater inflows to sanitary sewers maintained and operated by the board and not operated as a combined sewer, or to connections with such sewers;

(2) Disconnect non-stormwater inflows to stormwater sewers maintained and operated by the board and not operated as a combined sewer, or to connections with such sewers;

(3) Reconnect or relocate any such disconnected inflows in compliance with board rules and applicable building codes, health codes, or other relevant codes.

(B) Any inflow required to be disconnected under a rule adopted pursuant to division (A) of this section constitutes a nuisance subject to injunctive relief and abatement pursuant to Chapter 3767. of the Revised Code or as otherwise permitted by law.

(C) A board of county commissioners may use sewer district funds; county general fund moneys; and, to the extent permitted by their terms, loans, grants, or other moneys from appropriate state or federal funds, for either of the following:

(1) The cost of disconnections, reconnections, or relocations required by rules adopted pursuant to division (A) of this section, performed by the county or under contract with the county;

(2) Payments to the property owner or a contractor hired by the property owner pursuant to a competitive process established by district rules, for the cost of disconnections, reconnections, or relocations required by rules adopted pursuant to division (A) of this section after the board, pursuant to its rules, has approved the work to be performed and after the county has received from the property owner a statement releasing the county from all liability in connection with the disconnections, reconnections, or relocations.

(D) Except as provided in division (E) of this section, the board of county commissioners shall require in its rules regarding disconnections, reconnections, or relocations of sewers the reimbursement of moneys expended pursuant to division (C) of this section by either of the following methods:

(1) A charge to the property owner in the amount of the payment made pursuant to division (C) of this section for immediate payment or payment in installments with interest as determined by the board not to exceed ten per cent, which payments may be billed as a separate item with the rents charged to that owner for use of the sewers. The board may approve installment payments for a period of not more than fifteen years. If charges are to be paid in installments, the board shall certify to the county auditor information sufficient to identify each subject parcel of property, the total of the charges to be paid in installments, and the total number of installments to be paid. The auditor shall record the information in the sewer improvement record until these charges



are paid in full. Charges not paid when due shall be certified to the county auditor, who shall place the charges upon the real property tax list and duplicate against that property. Such charges shall be a lien on the property from the date they are placed on the tax list and duplicate and shall be collected in the same manner as other taxes.

(2) A special assessment levied against the property, payable in such number of years as the board determines, not to exceed fifteen years, with interest as determined by the board not to exceed ten per cent. The board of county commissioners shall certify the assessments to the county auditor, stating the amount and time of payment. The auditor shall record the information in the county sewer improvement record, showing separately the assessments to be collected, and shall place the assessments upon the real property tax list and duplicate for collection. Such assessment shall be a lien on the property from the date it is placed on the tax list and duplicate and shall be collected in the same manner as other taxes.

(E) The county may adopt a resolution specifying a maximum amount of the cost of any disconnection, reconnection, or relocation required pursuant to division (A) of this section that may be paid by the county for each affected parcel of property without requiring reimbursement. Such amount may be allowed only if there is a building code, health code, or other relevant code applicable to the affected parcel that prohibits in the future any inflows not allowed under rules adopted pursuant to division (A)(1) of this section. The board, by rule, shall establish criteria for determining how much of the maximum amount for each qualifying parcel need not be reimbursed.

(F) Disconnections, reconnections, or relocations required under this section that are performed by a contractor under contract with the property owner shall not be considered a "public improvement" and those performed by the county shall be considered a "public improvement" as defined in section 4115.03 of the Revised Code.

Disconnections, reconnections, or relocations required under this section performed by a contractor under contract with the property owner shall not be subject to competitive bidding or public bond laws.

(G) Property owners shall be responsible for maintaining any improvements made on private property to reconnect or relocate disconnected inflows pursuant to this section unless a public easement exists for the county to maintain that improvement.

HISTORY: 144 v H 267. Eff 11-20-91.

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#### **§ 6117.02 Fixing of rates and charges; use of funds.**

##### **Text of Statute**

(A) The board of county commissioners shall fix reasonable rates, including penalties for late payments, for the use, or the availability for use, of the sanitary facilities of a sewer district to be paid by every person and public agency whose premises are served, or capable of being served, by a connection directly or indirectly to those facilities when those facilities are owned or operated by the county and may change the rates from time to time as it considers advisable. When the sanitary facilities to be used by the county are owned by another public agency or person, the schedule of rates to be charged by the public agency or person for the use of the facilities by the county, or the formula or other procedure for their determination, shall be approved by the board at the time it enters into a contract for that use.

(B) The board also shall establish reasonable charges to be collected for the privilege of connecting to the sanitary facilities of the district, with the requirement that, prior to the connection, the charges shall be paid in full, or, if determined by the board to be equitable in a resolution relating to the payment of the charges, provision considered adequate by the board shall be made for their payment in installments at the times, in the amounts, and with the security, carrying charges, and penalties as may be found by the board in that resolution to be fair and appropriate. No public agency or person shall be permitted to connect to those facilities until the charges have been paid in full or provision for their payment in installments has been made. If the connection charges are to be paid in installments, the board shall certify to the county auditor information sufficient to identify each parcel of property served by a connection and, with respect to each parcel, the total of the charges to be paid in installments, the amount of each installment, and the total number of installments to be paid. The auditor shall record and maintain the information supplied in the sewer improvement record provided for in section 6117.33 of the Revised Code until the connection charges are paid in full. The board may include amounts attributable to connection charges being paid in installments in its billings of rates and charges for the use of sanitary facilities.

(C) When any of the sanitary rates or charges are not paid when due, the board may do any or all of the following as it considers appropriate:

(1) Certify the unpaid rates or charges, together with any penalties, to the county auditor, who shall place them upon the real property tax list and duplicate against the property served by the connection. The certified amount shall be a lien on the property from the date placed on the real property tax list and duplicate and shall be collected in the same manner as taxes, except that, notwithstanding section 323.15 of the Revised Code, a county treasurer shall accept a payment in that amount when separately tendered as payment for the full amount of the unpaid sanitary rates or charges and associated penalties. The lien shall be released immediately upon payment in full of the certified amount.



- (2) Collect the unpaid rates or charges, together with any penalties, by actions at law in the name of the county from an owner, tenant, or other person or public agency that is liable for the payment of the rates or charges;
- (3) Terminate, in accordance with established rules, the sanitary service to the particular property and, if so determined, any county water service to that property, unless and until the unpaid sanitary rates or charges, together with any penalties, are paid in full;
- (4) Apply, to the extent required, any security deposit made in accordance with established rules to the payment of sanitary rates and charges for service to the particular property.

All moneys collected as sanitary rates, charges, or penalties fixed or established in accordance with divisions (A) and (B) of this section for any sewer district shall be paid to the county treasurer and kept in a separate and distinct sanitary fund established by the board to the credit of the district. Except as otherwise provided in any proceedings authorizing or providing for the security for and payment of any public obligations, or in any indenture or trust or other agreement securing public obligations, moneys in the sanitary fund shall be applied first to the payment of the cost of the management, maintenance, and operation of the sanitary facilities of, or used or operated for, the district, which cost may include the county's share of management, maintenance, and operation costs under cooperative contracts for the acquisition, construction, or use of sanitary facilities and, in accordance with a cost allocation plan adopted under division (E) of this section, payment of all allowable direct and indirect costs of the district, the county sanitary engineer or sanitary engineering department, or a federal or state grant program, incurred for sanitary purposes under this chapter, and shall be applied second to the payment of debt charges payable on any outstanding public obligations issued or incurred for the acquisition or construction of sanitary facilities for or serving the district, or for the funding of a bond retirement or other fund established for the payment of or security for the obligations. Any surplus remaining may be applied to the acquisition or construction of those facilities or for the payment of contributions to be made, or costs incurred, for the acquisition or construction of those facilities under cooperative contracts. Moneys in the sanitary fund shall not be expended other than for the use and benefit of the district.

(D) The board may fix reasonable rates and charges, including connection charges and penalties for late payments, 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, and may change those rates and charges from time to time as it considers advisable. The rates and charges shall be payable periodically as determined by the board, except that any connection charges shall be paid in full in one payment, or, if determined by the board to be equitable in a resolution relating to the payment of those charges, provision considered adequate by the board shall be made for their payment in installments at the times, in the amounts, and with the security, carrying charges, and penalties as may be found by the board in that resolution to be fair and appropriate. The board may include amounts attributable to connection charges being paid in installments in its billings of rates and charges for the services provided by the drainage facilities.

When any of the drainage rates or charges are not paid when due, the board may do any or all of the following as it considers appropriate:

- (1) Certify the unpaid rates or charges, together with any penalties, to the county auditor, who shall place them upon the real property tax list and duplicate against the property to which the rates or charges apply. The certified amount shall be a lien on the property from the date placed on the real property tax list and duplicate and shall be collected in the same manner as taxes, except that notwithstanding section 323.15 of the Revised Code, a county treasurer shall accept a payment in that amount when separately tendered as payment for the full amount of the unpaid drainage rates or charges and associated penalties. The lien shall be released immediately upon payment in full of the certified amount.
- (2) Collect the unpaid rates or charges, together with any penalties, by actions at law in the name of the county from an owner, tenant, or other person or public agency that is liable for the payment of the rates or charges;
- (3) Terminate, in accordance with established rules, the drainage service for the particular property until the unpaid rates or charges, together with any penalties, are paid in full;
- (4) Apply, to the extent required, any security deposit made in accordance with established rules to the payment of drainage rates and charges applicable to the particular property.

All moneys collected as drainage rates, charges, or penalties in or for any sewer district shall be paid to the county treasurer and kept in a separate and distinct drainage fund established by the board to the credit of the district. Except as otherwise provided in any proceedings authorizing or providing for the security for and payment of any public obligations, or in any indenture or trust or other agreement securing public obligations, moneys in the drainage fund shall be applied first to the payment of the cost of the management, maintenance, and operation of the drainage facilities of, or used or operated for, the district, which cost may include the county's share of management, maintenance, and operation costs under cooperative contracts for the acquisition, construction, or use of drainage facilities and, in accordance with a cost allocation plan adopted under division (E) of this section, payment of all allowable direct and indirect costs of the district, the county sanitary engineer or sanitary engineering department, or a federal or state grant program, incurred for drainage purposes under this chapter, and shall be applied second to the payment of debt charges payable on any outstanding public obligations issued or incurred for the acquisition or construction of drainage facilities for or serving the district, or for the funding of a bond retirement or other fund established for the payment of or security for the obligations. Any surplus remaining may be applied to the acquisition or construction of those facilities or for the payment of



contributions to be made, or costs incurred, for the acquisition or construction of those facilities under cooperative contracts. Moneys in the drainage fund shall not be expended other than for the use and benefit of the district.

(E) A board of county commissioners may adopt a cost allocation plan that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from each of the funds of the district created pursuant to divisions (C) and (D) of this section, and that prescribes methods for allocating those costs. The plan shall authorize payment from each of those funds of only those costs incurred by the district, the county sanitary engineer or sanitary engineering department, or a federal or state grant program, and those costs incurred by the general and other funds of the county for a common or joint purpose, that are necessary and reasonable for the proper and efficient administration of the district under this chapter and properly attributable to the particular fund of the district. The plan shall not authorize payment from either of the funds of any general government expense required to carry out the overall governmental responsibilities of a county. The plan shall conform to United States office of management and budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," published May 17, 1995.

HISTORY: GC § 6602-1; 107 v 440; 108 v PtI, 369; 110 v 392; 112 v 275; 123 v 441; Bureau of Code Revision, 10-1-53; 127 v 622; 127 v PtII, 10 (Eff 7-1-58); 135 v H 461 (Eff 10-31-73); 141 v H 243 (Eff 2-25-87); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.03 Board of county commissioners may lay out, establish, and maintain sewer districts.**

##### **Text of Statute**

Whenever authorized by the legislative authority of any municipal corporation, the board of county commissioners may by resolution lay out, establish, and maintain one or more sewer districts within its county to include a part or all of the territory within such municipal corporation as the whole or a part of such district. Such authority shall be evidenced by an ordinance or resolution of the legislative authority of such municipal corporation, entered upon its records.

HISTORY: GC § 6602-1a; 110 v 338; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.04 Authority of county commissioners within territory of municipal corporation or regional district; municipal use of facilities.**

##### **Text of Statute**

The authority of a board of county commissioners to acquire, construct, maintain, and operate sanitary or drainage facilities for a county sewer district in the territory of a municipal corporation, or a regional district established under Chapter 6119. of the Revised Code, that is in whole or in part within the county sewer district is the same as provided by law with respect to territory within a county sewer district that is wholly outside a municipal corporation or a regional district, subject to the following in the case of facilities within a municipal corporation:

(A) The acquisition, construction, maintenance, and operation of the facilities shall first be authorized by an ordinance or resolution of the legislative authority of the municipal corporation.

(B) All road surfaces, curbs, sidewalks, sewers, water supply facilities, or other public improvements or property that may be disturbed or damaged by the construction of the facilities shall be replaced or restored within a reasonable time by the county, and the cost shall be treated as a part of the cost of the facilities.

(C) The municipal corporation, with the prior approval of or by agreement with the board, may make use of the facilities in accordance with rules established by the board and subject to any applicable requirements of the director of environmental protection.

HISTORY: GC § 6602-1b; 110 v 338; 112 v 275; Bureau of Code Revision, 10-1-53; 127 v 760 (Eff 8-27-57); 134 v S 397 (Eff 10-23-72); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.05 Jurisdiction where area is incorporated into or annexed to municipal corporation.**



**Text of Statute**

(A) Whenever any portion of a sewer district is incorporated as, or annexed to, a municipal corporation, the area so incorporated or annexed shall remain under the jurisdiction of the board of county commissioners for purposes of the acquisition and construction of sanitary and drainage facility improvements until all of those improvements for the area for which a resolution described in division (A) or (E) of section 6117.06 of the Revised Code has been adopted by the board have been acquired or completed or until the board has abandoned the improvements. The board, unless and until a conveyance is made to a municipal corporation in accordance with division (B) of this section, shall continue to have jurisdiction in the area so incorporated or annexed with respect to the management, maintenance, and operation of all sanitary and drainage facilities so acquired or completed, or previously acquired or completed, including the right to establish rules and rates and charges for the use of, and connections to, the facilities. The incorporation or annexation of any part of a district shall not affect the legality or enforceability of any public obligations issued or incurred by the county for purposes of this chapter to provide for the payment of the cost of acquisition, construction, maintenance, or operation of any sanitary or drainage facilities within the area, or the validity of any assessments levied or to be levied upon properties within the area to provide for the payment of the cost of acquisition, construction, maintenance, or operation of the facilities.

(B) Any completed sanitary or drainage facilities acquired or constructed by a county under this chapter for the use of any county sewer district, or any part of those facilities, that are located within a municipal corporation or within any area that is incorporated as, or annexed to, a municipal corporation, or any part of the facilities that serve a municipal corporation or such an area, may be conveyed, by mutual agreement between the board and the municipal corporation, to the municipal corporation on terms and for consideration as may be negotiated. Upon and after the conveyance, the municipal corporation shall manage, maintain, and operate the facilities in accordance with the agreement. The board may retain the right to joint use of all or part of any facilities so conveyed for the benefit of the district. Neither the validity of any assessment levied or to be levied, nor the legality or enforceability of any public obligations issued or incurred, to provide for the payment of the cost of the acquisition, construction, maintenance, or operation of the facilities or any part of them, shall be affected by the conveyance.

HISTORY: GC § 6602-1c; 110 v 338; Bureau of Code Revision, 10-1-53; 129 v 1631 (Eff 10-24-61); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**§ 6117.06 Plan of sewerage or drainage; special assessments**

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**Text of Statute**

(A) After the establishment of any sewer district, the board of county commissioners, if a sanitary or drainage facility improvement is to be undertaken, may have the county sanitary engineer prepare, or otherwise cause to be prepared, for the district, or revise as needed, a general plan of sewerage or drainage that is as complete in each case as can be developed at the time and that is devised with regard to any existing sanitary or drainage facilities in the district and present as well as prospective needs for additional sanitary or drainage facilities in the district. After the general plan, in original or revised form, has been approved by the board, it may adopt a resolution generally describing the improvement that is necessary to be acquired or constructed in accordance with the particular plan, declaring that the improvement is necessary for the preservation and promotion of the public health and welfare, and determining whether or not special assessments are to be levied and collected to pay any part of the cost of the improvement.

(B) If special assessments are not to be levied and collected to pay any part of the cost of the improvement, the board, in the resolution provided for in division (A) of this section or in a subsequent resolution, including a resolution authorizing the issuance or incurrence of public obligations for the improvement, may authorize the improvement and the expenditure of the funds required for its acquisition or construction and may proceed with the improvement without regard to the procedures otherwise required by divisions (C), (D), and (E) of this section and by sections 6117.07 to 6117.24 of the Revised Code. Those procedures are required only for improvements for which special assessments are to be levied and collected.

(C) If special assessments are to be levied and collected pursuant to a determination made in the resolution provided for in division (A) of this section or in a subsequent resolution, the procedures referred to in division (B) of this section as being required for that purpose shall apply, and the board may have the county sanitary engineer prepare, or otherwise cause to be prepared, detailed plans, specifications, and an estimate of cost for the improvement, together with a tentative assessment of the cost based on the estimate. The tentative assessment shall be for the information of property owners and shall not be levied or certified to the county auditor for collection. The detailed plans, specifications, estimate of cost, and tentative assessment, if approved by the board, shall be carefully preserved in the office of the board or the county sanitary engineer and shall be open to the inspection of all persons interested in the improvement.

(D) After the board's approval of the detailed plans, specifications, estimate of cost, and tentative assessment, and at least twenty-four days before adopting a resolution pursuant to division (E) of this section, the board, except to the extent that appropriate



waivers of notice are obtained from affected owners, shall cause to be sent a notice of its intent to adopt the resolution to each owner of property proposed to be assessed that is listed on the records of the county auditor for current agricultural use value taxation pursuant to section 5713.31 of the Revised Code and that is not located in an agricultural district established under section 929.02 of the Revised Code. The notice shall satisfy all of the following:

- (1) Be sent by first class or certified mail;
- (2) Specify the proposed date of the adoption of the resolution;
- (3) Contain a statement that the improvement will be financed in whole or in part by special assessments and that all properties not located in an agricultural district established pursuant to section 929.02 of the Revised Code may be subject to a special assessment;
- (4) Contain a statement that an agricultural district may be established by filing an application with the county auditor.

If it appears, by the return of the mailed notices or by other means, that one or more of the affected owners cannot be found or are not served by the mailed notice, the board shall cause the notice to be published once in a newspaper of general circulation in the county not later than ten days before the adoption of the resolution.

(E) After complying with divisions (A), (C), and (D) of this section, the board may adopt a resolution declaring that the improvement, which shall be described as to its nature and its location, route, and termini, is necessary for the preservation and promotion of the public health and welfare, referring to the plans, specifications, estimate of cost, and tentative assessment, stating the place where they are on file and may be examined, and providing that the entire cost or a lesser designated part of the cost will be specially assessed against the benefited properties within the district and that any balance will be paid by the county at large from other available funds. The resolution also shall contain a description of the boundaries of that part of the district to be assessed and shall designate a time and place for objections to the improvement, to the tentative assessment, or to the boundaries of the assessment district to be heard by the board. The date of that hearing shall be not less than twenty-four days after the date of the first publication of the notice of the hearing required by this division.

The board shall cause a notice of the hearing to be published once a week for two consecutive weeks in a newspaper of general circulation in the county, and on or before the date of the second publication, it shall cause to be sent by first class or certified mail a copy of the notice to every owner of property to be assessed for the improvement whose address is known.

The notice shall set forth the time and place of the hearing, a summary description of the proposed improvement, including its general route and termini, a summary description of the area constituting the assessment district, and the place where the plans, specifications, estimate of cost, and tentative assessment are on file and may be examined. Each mailed notice also shall include a statement that the property of the addressee will be assessed for the improvement. The notice also shall be sent by first class or certified mail, on or before the date of the second publication, to the clerk, or to the official discharging the duties of a clerk, of any municipal corporation any part of which lies within the assessment district and shall state whether or not any property belonging to the municipal corporation is to be assessed and, if so, shall identify that property.

At the hearing, or at any adjournment of the hearing, of which no further published or mailed notice need be given, the board shall hear all parties whose properties are proposed to be assessed. Written objections to or endorsements of the proposed improvement, its character and termini, the boundaries of the assessment district, or the tentative assessment shall be received by the board for a period of five days after the completion of the hearing, and no action shall be taken by the board in the matter until after that period has elapsed. The minutes of the hearing shall be entered on the journal of the board, showing the persons who appear in person or by attorney, and all written objections shall be preserved and filed in the office of the board.

HISTORY: GC § 6602-2; 107 v 440, § 2; 112 v 275; Bureau of Code Revision, 10-1-53; 140 v H 551 (Eff 9-21-84); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**[§ 6117.06.1] § 6117.061 Deferment of assessment collections.**

**Text of Statute**

At any time prior to the expiration of the five-day period provided by section 6117.06 of the Revised Code for the filing of written objections, any owner of property to be assessed for an improvement under sections 6117.01 to 6117.45, inclusive, of the Revised Code may file with the board of county commissioners a request in writing for deferment of the collection of his assessment. Such request shall identify the property in connection with which the request for deferment is made, shall describe its present use, shall state its estimated market value, showing separately the value of the land and the value of the buildings thereon, shall state the reasons why a portion of the assessment should be deferred, and the amount to be deferred. The board shall promptly consider



such request and, if it finds that it will be inequitable to certify the entire amount of such assessment upon completion of the improvement to the county auditor for collection, the board may order that the collection of a portion of such assessment, not exceeding seventy-five per cent thereof, shall be deferred as provided in section 6117.33 of the Revised Code. In determining whether it is inequitable to certify an assessment for immediate collection upon completion of the improvement, the board shall consider as significant the following factors: whether or not the property is presently unimproved; whether or not it is being used for farming or agricultural purposes; the extent to which it is in immediate need of sewer service; whether the tentative assessment is a disproportionately high percentage of the estimated market value of the property after the improvement will have been completed. All requests for the deferment of the collection of assessments shall be considered by the board before it adopts the improvement resolution provided for by section 6117.07 of the Revised Code, and, if the board orders any part of any assessment to be deferred for collection, the sanitary engineer shall forthwith revise the list of tentative assessments to accord with the order of the board thereby showing the amount of each assessment to be collected upon the completion of the improvement and the amount of each assessment to be deferred for collection. The decision of the board on any request for deferment shall be final and no appeal therefrom may be taken.

The board may, for good cause shown and notwithstanding the failure of a property owner to file such request within the period provided in this section, consider a request for the deferment of an assessment at any time prior to the adoption of the resolution confirming the revised assessment provided for by section 6117.32 of the Revised Code.

HISTORY: 129 v 1631. Eff 10-24-61.

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**[§ 6117.06.2] § 6117.062 Application by board of county commissioners for advances from water and sewer fund; deferred assessments.**

**Text of Statute**

(A) A board of county commissioners may apply to the water and sewer commission, created by division (C) of section 1525.11 of the Revised Code, for an advance of moneys from the water and sewer fund, created by division (A) of section 1525.11 of the Revised Code, in an amount equal to that portion of the costs of an improvement authorized under sections 6117.01 to 6117.45 of the Revised Code which is to be financed by assessments whose collection is deferred pursuant to division (B) of this section. The application for such an advance of moneys shall be made in the manner prescribed by rules of the commission.

(B) At any time prior to the expiration of the five-day period provided by section 6117.06 of the Revised Code for the filing of written objections, any owner of property which is classified on the general tax list of the county auditor as agricultural land and has been assessed for the extension of a trunk sewer line over or along such property under sections 6117.01 to 6117.45 of the Revised Code may file with the board of county commissioners a request in writing for deferment of the collection of his assessment if the trunk sewer line serves a purpose, as set forth in section 1525.13 of the Revised Code, for which the fund may be used. Such request shall identify the property in connection with which the request for deferment is made, shall describe its present use and present classification on the general tax list of the county auditor, shall state its estimated market value, showing separately the value of the land and the value of the buildings thereon, shall state the reasons, if any, why a portion of the benefit of the improvement will not be realized until the use of the land is changed, and shall state the amount to be deferred. The board shall promptly consider such request and may order the deferment of the collection of that portion of the assessment representing a benefit from the improvement which will not be realized until the use of the land is changed. The board may, upon request of an owner whose property has been assessed for the extension of a trunk sewer line over or along such property under sections 6117.01 to 6117.45 of the Revised Code, defer all or any part of the assessment on property which is classified on the general tax list as agricultural land, by attributing the amount of such assessment or part thereof as tap-in charges, if the trunk sewer line serves a purpose set forth in section 1525.13 of the Revised Code for which the fund may be used. A deferment under this section may be conditioned upon the approval of the advance of moneys applied for pursuant to division (A) of this section, and a maximum length of the deferment may be fixed to coincide with the maximum time within which the advance must be repaid. The decision on the request for deferment of collection of assessments shall be made pursuant to standards established by rules of the commission. Upon determination and approval of final assessments, the board of county commissioners shall certify all deferred assessments and a fee equal to any fee paid by the board to the commission pursuant to division (C) of section 1525.12 of the Revised Code attributable to the deferred payments to the county auditor. For purposes of this section, "assessment," "deferred assessment," or "assessment deferred under this section" mean the fee and the deferred assessment certified to the county auditor. The county auditor shall record an assessment deferred under this section in the sewer improvement record. Such record shall be kept until such time as the assessments are paid in full or certified for collection in installments as provided in this section. During the time when the assessment is deferred there shall be a lien on the property assessed, which lien shall arise at the time of recordation by the county auditor and which shall be in force until the assessments are paid in full or certified for collection in installments.

(C) The board of county commissioners shall defer the collection of an assessment, except the amount of such assessment or part thereof attributable as tap-in charges, which has been deferred pursuant to division (B) of this section on or before January 1, 1987, beyond the expiration of the maximum time for the original deferment if the property owner requests in writing, no later than six months prior to the expiration of the original deferment, that the assessment be further deferred and as long as the property owner's land could qualify for placement in an agricultural district pursuant to section 929.02 of the Revised Code.

The board shall regularly review the use and ownership of the property for which the collection of assessments has been deferred pursuant to this division, and upon finding that the land could no longer qualify for placement in an agricultural district pursuant to



section 929.02 of the Revised Code, the board shall immediately collect, without interest, the full amount of the assessment deferred and repay the commission the amount of any moneys advanced by it in regard to such assessment. The board shall pay all such amounts to the commission in one annual payment or longer period as approved by the commission. The board shall pay, from the general funds of the county, interest annually at the interest rate per annum equal to that rate of interest published as the 20-bond index rate in "The Bond Buyer" minus four per cent per annum or at five per cent per annum, whichever rate is greater, for any moneys not repaid to the commission pursuant to this division within one year of the date of the disqualification of the property for the continual deferment which requires such repayment. The interest rate for any moneys not repaid to the commission shall be calculated one year from the date of the disqualification of the property for the continual deferment which requires such repayment, and annually thereafter.

(D) The board of county commissioners shall send a notice by regular or certified mail to all owners of property on which assessments have been deferred pursuant to division (B) of this section, which lists the expiration of the deferment, not later than two hundred ten days prior to the expiration of the deferment of those assessments.

(E) The board shall collect assessments, without interest, which have been deferred pursuant to division (B) of this section upon expiration of the maximum time for which deferments were made and repay the commission the amount of any moneys advanced by it in regard to such assessments; provided that for a property owner who requests in writing, no later than six months prior to the expiration of the deferment period, that payment of his deferred assessments be in installments, the board of county commissioners upon expiration of the deferment period may by resolution further certify for collection pursuant to section 6117.33 of the Revised Code, such deferred assessments in installments over not more than twenty years, as determined by the board, together with interest thereon each year on the unpaid balance at the same rate borne by bonds of the county which shall be issued in anticipation thereof as provided in Chapter 133. of the Revised Code, and the proceeds of the bond issue used to repay such deferred assessments to the commission. Prior to the expiration of the maximum time of deferment, the board shall regularly review the use of the property for which the collection of assessments has been deferred and upon finding, pursuant to the rules of the commission, that the use of the land has changed from the use at the time of the deferment so that the benefit of the improvement can then be realized, the board shall immediately collect the full amount of the assessment for the portion of the property for which the use has so changed, without interest, and repay the commission the amount of any moneys advanced by it in regard to such assessment. The board shall pay all such amounts to the commission in one annual payment or longer period as approved by the commission. The board shall pay, from the general funds of the county, interest annually at the interest rate per annum equal to that rate of interest published as the 20-bond index rate in "The Bond Buyer" minus four per cent per annum or at five per cent per annum, whichever is greater, for any moneys not repaid to the commission pursuant to this division within one year of the date of the change in the use of property requiring such repayment, or of the date upon which payment of a tap-in charge is required by law to be made, whichever date is applicable. The interest rate for any moneys not repaid to the commission shall be calculated one year from the date of the change in the use of property requiring such repayment or from the date upon which payment of a tap-in charge is required by law to be made, whichever date is applicable, and annually thereafter.

HISTORY: 131 v 1427 (Eff 11-9-65); 132 v H 551 (Eff 12-1-67); 134 v H 241 (Eff 3-31-73); 137 v S 221 (Eff 11-23-77); 141 v H 201 (Eff 7-1-85); 141 v S 363 (Eff 9-12-86); 143 v H 230. Eff 10-30-89.

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#### **§ 6117.07 Proceeding with construction; resolution.**

##### **Text of Statute**

After the expiration of the period of five days provided for in section 6117.06 of the Revised Code for the filing of written objections, the board of county commissioners shall determine whether or not it will proceed with the construction of the improvement mentioned in such section. Notice of the time and place of each meeting of the board of county commissioners, at which the resolution to proceed with the construction of such improvement will be considered, shall be given in writing to all persons who filed written objections as provided in section 6117.06 of the Revised Code. Such notice shall contain the following language in addition to the time and place of the meeting of the board: "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." If it decides to proceed therewith, the board shall ratify or amend the plans for the improvement and the character and termini thereof, the boundaries of the assessment district, and the tentative assessment, and may cause such revision of plans, boundaries, or assessments as the board considers necessary to be made by the county sanitary engineer. If the boundaries of the assessment district are amended so as to include any property not included within the boundaries as established by the resolution of necessity provided for in section 6117.06 of the Revised Code, the owners of all such property shall be notified by mail if their addresses are known, and notice shall be published once a week for two consecutive weeks in a newspaper of general circulation within the county that such amendments have been adopted and that a hearing will be given by the board at a time and place stated in such notice, at which all persons interested will be heard by the board. The date of such hearing shall be not less than twenty-four days after the first publication of such notice, and the hearing shall be conducted and records kept in the same manner as the first hearing. Five days shall be allowed for the filing of written objections as provided in such section for the first hearing.

After the expiration of such five day period, the board shall ratify the plans for the improvement and the character and termini thereof, the boundaries of the assessment district, and the tentative assessment, or shall further amend the same. If the boundaries of the assessment district are amended so as to include any property not included in the assessment district as originally established or previously amended, further notice and hearing shall be given to the owners of such property in the same



manner as for the first amendment of such boundaries, and the same procedure shall be repeated until all property owners affected have been given an opportunity to be heard. If the owners of all property added to an assessment district by amendment of the original boundaries thereof waive objection to such amendment in writing, no further notice or hearing shall be given.

After the board has ratified the plans for the improvement and the character and termini thereof, the boundaries of the assessment district, and the tentative assessment, either as originally presented or as amended, and if it decides to proceed therewith, the board shall adopt a resolution to be known as the improvement resolution. Such improvement resolution shall declare the determination of such board to proceed with the construction of the improvement provided for in the resolution of necessity, in accordance with the plans and specifications provided for such improvement as ratified or amended, and whether bonds or certificates of indebtedness shall be issued in anticipation of the collection of special assessments, as provided in sections 6117.08 to 6117.45, inclusive, of the Revised Code, or that money in the county treasury unappropriated for any other purpose shall be appropriated to pay for said improvement.

HISTORY: GC § 6602-3; 107 v 440, § 3; 112 v 275; Bureau of Code Revision, 10-1-53; 133 v H 175. Eff 11-19-69.

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#### **§ 6117.08 Board may issue public obligations and construct improvement.**

##### **Text of Statute**

After the adoption of a resolution to proceed with an improvement as provided for in section 6117.07 of the Revised Code, the construction of the improvement shall be deferred until ten days have elapsed. If, at the expiration of that period, no appeal has been effected by any property owner as provided in sections 6117.09 to 6117.24 of the Revised Code, the action of the board of county commissioners shall be final, and the board may proceed to issue or incur public obligations and construct the improvement. If, at the end of that ten days, any owner of property to be assessed for the improvement has effected an appeal, the construction of the improvement shall be deferred until the matters appealed from have been disposed of in court.

HISTORY: GC § 6602-3a; 112 v 275; Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.09 Appeal to probate court from board.**

##### **Text of Statute**

Any owner of property to be assessed or taxed for an improvement under sections 6117.01 to 6117.45 or sections 6103.01 to 6103.30 of the Revised Code, may appeal to the probate court from the action of the board of county commissioners in determining to proceed with the improvement in regard to any of the following matters:

- (A) The necessity of the improvement, including the question whether the cost of the improvement will exceed the benefits resulting therefrom;
- (B) Boundaries of the assessment district;
- (C) The tentative apportionment of the assessment.

Such appeal shall be effected within ten days after the passage of the resolution to proceed with the improvement. No appeal shall be allowed from said decision of the board except as to the tentative apportionment of the assessment if the owners of land tentatively assessed for at least eighty-five per cent of the cost of said improvement under sections 6117.01 to 6117.45 or sections 6103.01 to 6103.30 of the Revised Code, have consented in writing to the action of the board in determining to proceed with said improvement. If such an appeal to the probate court has been perfected by any property owner prior to procuring such consent in writing of the owners of land tentatively assessed for at least eighty-five per cent of the cost of said improvement, the probate court before whom such appeal is pending, on the motion of the board or any owner of land assessed for said improvements, shall dismiss so much of said appeal as refers to the necessity of the improvement or the boundaries of said district upon the introduction of satisfactory proof of such written consent of the owners of land tentatively assessed for at least eighty-five per cent of the cost of the improvement as provided for in this section. Such property owner may also appeal from the decision of the board in refusing to grant the prayer of any petition for improvement under sections 6117.01 to 6117.40 of the Revised Code. If the director of environmental protection has made an order declaring that any improvement is necessary for the public health and welfare as provided in section 6117.34 or 6103.17 of the Revised Code, no property owner shall have the right to appeal from the action of the board declaring such improvement necessary.



HISTORY: GC § 6602-3b; 112 v 275; 113 v 289; Bureau of Code Revision, 10-1-53; 134 v S 397. Eff 10-23-72.

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**§ 6117.10 Appeal to probate court when improvement is located in two or more counties.**

**Text of Statute**

Any person, firm, or corporation desiring to appeal to the probate court as provided in section 6117.09 of the Revised Code, when the improvement is located in two or more counties, may appeal to the probate court of the county in which property of such appellant to be assessed for such improvement is located.

Any person, firm, or corporation desiring to appeal from the final order or judgment of the board upon any of the questions mentioned in such section, 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. The board shall fix the amount of the bond to be given by the appellant, which amount shall be reasonable, and shall make an entry thereof upon its journal. The appellant within ten days thereafter shall file with the county auditor a bond in the amount so fixed with sureties to be approved by the auditor, and such bond shall be conditioned to pay all costs made on the appeal if the appellant fails to sustain such appeal or the same is dismissed.

HISTORY: GC § 6602-3c; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.11 Appeal when the petition for an improvement is dismissed.**

**Text of Statute**

In case the petition for an improvement is dismissed, or the prayer thereof is not granted, then a person, firm, or corporation desiring to appeal therefrom must give the notice provided for in section 6117.10 of the Revised Code, on the date when the order is made dismissing said petition, or refusing to grant the prayer thereof, and file the bond required within the time prescribed in such section.

HISTORY: GC § 6602-3d; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.12 Appeal by guardian.**

**Text of Statute**

The guardian of minors or other persons under disability may appeal to the probate court as provided in sections 6117.09 to 6117.11, inclusive, of the Revised Code, without giving bond for the payments of costs. The taking of such appeal must first be authorized by the court which appointed such guardian. The probate court shall make an entry showing such disability on the journal. The estates of such persons shall be liable for all costs adjudged against them or their legal representatives.

HISTORY: GC § 6602-3e; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.13 Transmittal of original papers and transcript.**

**Text of Statute**

Within ten days after the filing of an appeal bond provided for in section 6117.10 or 6117.11 of the Revised Code, or the making of the entry provided for in section 6117.12 of the Revised Code, the board of county commissioners shall transmit to the probate court the original papers in the proceedings, and a certified transcript of the record of said board of all proceedings in connection therewith. Upon receipt thereof, the probate judge shall forthwith docket the cause, and the appellants shall be designated as the plaintiffs, and the board shall be designated as the defendant.

HISTORY: GC § 6602-3f; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.14 Hearing of questions and motions on appeal.****Text of Statute**

The probate judge shall designate a day not exceeding five days after the docketing of the cause as provided in section 6117.13 of the Revised Code for the hearing of all preliminary questions and motions on the appeal, and for the examination of the papers and proceedings. On the day so fixed, all preliminary motions and questions arising upon the appeal shall be heard and determined, and if the probate court finds that the proceedings are irregular, or that the appeal is not perfected according to law, it shall dismiss such appeal at the cost of the appellants, and certify such dismissal with its proceedings thereon to the board of county commissioners. The court may waive technical defects, errors, or omissions in such proceedings.

HISTORY: GC § 6602-3g; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.15 Fixing day for trial; publication of notice.****Text of Statute**

If the probate judge finds that an appeal under sections 6117.09 to 6117.21, inclusive, of the Revised Code, has been properly perfected, and that the proceedings are substantially regular, he shall fix a day not more than twenty days thereafter for the trial of the case, and shall publish at least twice in a newspaper of general circulation within the county a notice that such appeal has been made and stating the time and place of such trial. The first publication shall be at least fifteen days before such trial, and the second publication shall be at least eight days before such trial. At the time so fixed the parties shall offer their evidence to the court upon the matters appealed from. The rules of law and procedure governing civil cases in the court of common pleas shall apply to the trial of the cause in the probate court.

HISTORY: GC § 6602-3h; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.16 Action of probate court when more than one party appeals.****Text of Statute**

If more than one party appeals in regard to the same improvement, the probate court shall order the cases to be consolidated and tried together, but the rights of each person, firm, or corporation as to the inclusion of their property in the assessment district or as to the apportionment of the tentative assessment shall be separately determined by the court in its verdict.

HISTORY: GC § 6602-3i; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.17 Findings of court.****Text of Statute**

At the conclusion of the trial provided for in section 6117.15 of the Revised Code, the probate court shall find separately upon each claim for adjustment of the apportionment of the tentative assessment, if the appeal is from the judgment of the board of county commissioners in reference to apportionment of such assessment. The court shall determine whether the improvement petitioned for or granted will be necessary for the public health, convenience, or welfare, or whether the cost of it will exceed the benefit resulting from such improvement, or whether the boundaries of the assessment district should be modified, if the appeal is from an order establishing the proposed improvement or dismissing or refusing to grant the prayer of the petition or establishing the boundaries of the assessment district.

If the court finds that the cost of the improvement will exceed the benefit resulting from it, it shall declare that the improvement is not necessary for the public health, convenience, or welfare. No property shall be added to the assessment district until the owners of it have been given an opportunity to be heard by the court. A notice of such hearing shall be served on such property owners by the court in the manner provided for the service of summons in civil actions. If such owners are not residents of the county, or if in any case it appears by the return of the notice that such owner cannot be found, the notice shall be published at least twice in a



newspaper of general circulation within the county, and the date of such hearing shall be at least one week after service of notice or of the second publication of such notice. If a new trial is not granted for cause shown, the court shall render a judgment ordering such modification of the tentative assessment, or of the boundaries of the assessment district as the court determines. The court shall also make a finding for or against the improvement.

HISTORY: GC § 6602-3j; 112 v 275; Bureau of Code Revision, 10-1-53; 141 v H 412. Eff 3-17-87.

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#### **§ 6117.18 Record and costs.**

##### **Text of Statute**

The probate judge shall make a record of all proceedings before him, and tax the cost in favor of the prevailing party and against the losing party. If more than one matter is appealed from, and a party prevails as to one matter and loses as to another, the probate court shall determine how much of the costs each party shall pay. The costs on motions or continuance and the like shall be taxed and paid as the court directs. If there are several persons upon the side taxed with costs the court shall apportion the costs equitably among them, and in case several persons are interested on one side of the case and part of them fail, the court shall make such order as to costs as it deems equitable. In cases not specifically provided for, the court shall render such judgment in respect to costs as is equitable. The board of county commissioners shall pay any costs adjudged against it out of the county treasury.

HISTORY: GC § 6602-3k; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.19 Appeal as to necessity of improvement.**

##### **Text of Statute**

If an appeal has been made in reference to the necessity of the improvement as provided in section 6117.09 of the Revised Code, and it appears from the transcript certified to the board of county commissioners by the probate judge that the proposed improvement is not necessary for the public health, convenience, and welfare, or that the cost thereof will exceed the benefits resulting from such improvement, the board shall abandon the improvement. If it appears from such transcript that the improvement is necessary for the public health, convenience, and welfare and that the cost thereof will not exceed the benefits resulting therefrom, the board may proceed with the improvement.

HISTORY: GC § 6602-3l; 112 v. 275; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.20 Appeal as to boundaries or to assessment.**

##### **Text of Statute**

If an appeal has been made in reference to the boundaries of the assessment district or to the tentative assessment as provided in section 6117.09 of the Revised Code, and it appears from the transcript certified to the board of county commissioners by the probate judge that the boundaries of the assessment district should be changed or that the tentative assessment should be modified, the board may make such changes or modifications and proceed with the improvement, provided that the necessity of such improvement has not been denied by the probate court or the cost thereof found to exceed the benefits resulting from such improvement.

HISTORY: GC § 6602-3m; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.21 Probate court shall render judgment for improvement.**

##### **Text of Statute**

If an appeal is taken from the order of the board of county commissioners dismissing or refusing to grant the prayer of the petition, and the probate court finds in favor of the improvement, it shall render judgment establishing such improvement, unless it grants a



new trial, and the improvement shall henceforth be established unless the judgment of said court is reversed on appeal.

HISTORY: GC § 6602-3n; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.22 Fees and compensation.**

##### **Text of Statute**

For their services required on appeal the officers and other persons mentioned in sections 6117.01 to 6117.40, inclusive, of the Revised Code, are entitled to the fees and compensation which they are entitled to by law for like services in other cases.

HISTORY: GC § 6602-3o; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.23 Appeal from probate court.**

##### **Text of Statute**

The final judgment of the probate court may be reviewed on appeal as in other cases. If an appeal is prosecuted from the judgment of the probate court as to the necessity of the improvement, the construction of the improvement shall be deferred until the appeal is finally disposed of. If an appeal is prosecuted from the judgment of the court as to the inclusion of any property in the assessment district or as to the apportionment of the tentative assessment, the board of county commissioners may proceed with the construction of the improvement in accordance with the transcript of the probate court and thereafter shall adjust those matters to the extent necessary in accordance with their final adjudication.

HISTORY: GC § 6602-3p; 112 v 275; Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.24 Error in proceedings.**

##### **Text of Statute**

Any court in which an action is brought to enjoin, reverse, or declare void the proceedings by which any improvement has been made or ordered to be made under sections 6117.01 to 6117.45, inclusive, or 6103.02 to 6103.30, inclusive, of the Revised Code, or to enjoin a collection of a tax or assessment levied for such purpose, or any part thereof, or to which appeal is taken under section 6117.09 of the Revised Code to declare the improvement unnecessary or to amend the boundaries of any assessment district, or to modify the tentative assessment prior to the construction of any improvement, if there is manifest error in such proceedings affecting the right of the plaintiff in such action, may set such proceedings aside as to him without affecting the rights or liabilities of the other parties in interest.

The court shall allow parol testimony that said improvement will be conducive to the public health, convenience, and welfare and that any steps required by law for an improvement have been substantially complied with, notwithstanding any errors or defects in any record required to be kept by any board or officer, and without finding error the court may correct any gross injustice in the assessment made by the board of county commissioners. The court on the final hearing shall make such order as it deems equitable, and order any tax or assessment levied against the plaintiff to remain on the duplicate for collection, or order it to be levied in whole or in part, or perpetually enjoin it or any part thereof, or if it has been paid under protest, order the whole or such part thereof as it deems proper to be refunded. The cost of such action shall be apportioned among the parties or paid out of the county treasury as the court directs.

HISTORY: GC § 6602-3q; 112 v 275; Bureau of Code Revision. Eff 10-1-53.

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#### **§ 6117.25 Board may borrow money to pay costs.**



**Text of Statute**

The board of county commissioners may pay the whole or any part of the cost of constructing, maintaining, repairing, or operating any improvement provided for in this chapter, including the payment of a county sanitary engineer and his assistants and other necessary expenses. Insofar as such expenses relate to the construction of a permanent improvement, they may be considered as part of the cost of such improvement and bonds may be issued therefor. Bonds and notes in anticipation thereof, including bonds issued in anticipation of the collection of assessments deferred pursuant to sections 6117.061 [6117.06.1] and 6117.33 of the Revised Code, may be issued by the board pursuant to Chapter 133. of the Revised Code, to finance any such improvement; provided that where a separate issue of bonds is issued in anticipation of the collection of deferred assessments, the first principal maturity of such bonds may be not later than five years from the date of such bonds. Bonds issued in anticipation of the collection of assessments deferred pursuant to sections 6117.061 [6117.06.1] and 6117.33 of the Revised Code and notes issued in anticipation of such bonds shall be considered for all purposes under this chapter and Chapter 133. of the Revised Code as being bonds or notes issued in anticipation of the levy or collection of special assessments.

HISTORY: GC § 6602-4; 107 v 440, § 4; 108 v PtI, 368; 110 v 338; 112 v 275; 112 v 364(382), § 10; Bureau of Code Revision, 10-1-53; 129 v 1631 (Eff 10-24-61); 143 v H 230. Eff 10-30-89.

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[§ 6117.25.1] § 6117.251 Sanitary or drainage facility improvements; assessments; appeals.

**Text of Statute**

(A) After the establishment of any county sewer district, the board of county commissioners may determine by resolution that it is necessary to provide sanitary or drainage facility improvements and to maintain and operate the improvements within the district or a designated portion of the district, that the improvements, which shall be generally described in the resolution, shall be constructed, that funds are required to pay the preliminary costs of the improvements to be incurred prior to the commencement of the proceedings for their construction, and that those funds shall be provided in accordance with this section.

(B) Prior to the adoption of the resolution, the board shall give notice of its pendency and of the proposed determination of the necessity of the improvements generally described in the resolution. The notice shall set forth a description of the properties to be benefited by the improvements and the time and place of a hearing of objections to and endorsements of the improvements. The notice shall be given either by publication in a newspaper of general circulation in the county once a week for two consecutive weeks, or by mailing a copy of the notice by first class or certified mail to the owners of the properties proposed to be assessed at their respective tax mailing addresses, or by both manners, the first publication to be made or the mailing to occur at least two weeks prior to the date set for the hearing. At the hearing, or at any adjournment of the hearing, of which no further published or mailed notice need be given, the board shall hear all persons whose properties are proposed to be assessed and the evidence it considers to be necessary. The board then shall determine the necessity of the proposed improvements and whether the improvements shall be made by the board and, if they are to be made, shall direct the preparation of tentative assessments upon the benefited properties and by whom they shall be prepared.

(C) In order to obtain funds for the preparation of a general or revised general plan of sewerage or drainage for the district or part of the district, for the preparation of the detailed plans, specifications, estimate of cost, and tentative assessment for the proposed improvements, and for the cost of financing and legal services incident to the preparation of all of those plans and a plan of financing the proposed improvements, the board may levy upon the properties to be benefited in the district a preliminary assessment apportioned according to benefits or to tax valuation or partly by one method and partly by the other method as the board may determine. The assessments shall be in the amount determined to be necessary to obtain funds for the general and detailed plans and the cost of financing and legal services and shall be payable in the number of years that the board shall determine, not to exceed twenty years, together with interest on any public obligations that may be issued or incurred in anticipation of the collection of the assessments.

(D) The board shall have power at any time to levy additional assessments according to benefits or to tax valuation or partly by one method and partly by the other method as the board may determine for the purposes described in division (C) of this section upon the benefited properties to complete the payment of the costs described in division (C) of this section or to pay the cost of any additional plans, specifications, estimate of cost, or tentative assessment and the cost of financing and legal services incident to the preparation of those plans and the plan of financing, which additional assessments shall be payable in the number of years that the board shall determine, not to exceed twenty years, together with interest on any public obligations that may be issued or incurred in anticipation of the collection of the additional assessments.

(E) Prior to the adoption of a resolution levying assessments under this section, the board shall 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 owners of the properties proposed to be assessed at their respective tax mailing addresses, or by both manners, the publication to be made or the mailing to occur at least ten days prior to the date of the meeting at which the resolution shall be taken up for consideration; that notice shall state the time and place of the meeting at which the resolution is to be considered. At the time and place of the meeting, or at any adjournment of the meeting, of which no further published or mailed notice need be given, the board shall hear all persons whose properties are proposed to be assessed, shall correct any errors and make any revisions that appear to be necessary or just, and then may adopt a resolution levying upon the properties determined to be benefited the assessments as so corrected and revised.



The assessments levied by the resolution shall be certified to the county auditor for collection in the same manner as taxes in the year or years in which they are payable.

(F) Upon the adoption of the resolution described in division (E) of this section, no further action shall be taken or work done until ten days have elapsed. If, at the expiration of that period, no appeal has been effected by any property owner as provided in this division, the action of the board shall be final. If, at the end of that ten days, any owner of property to be assessed for the improvements has effected an appeal, no further action shall be taken and no work done in connection with the improvements under the resolution until the matters appealed from have been disposed of in court.

Any owner of property to be assessed may appeal as provided and upon the grounds stated in sections 6117.09 to 6117.24 of the Revised Code.

If no appeal has been perfected or if on appeal the resolution of the board is sustained, the board may authorize and enter into contracts to carry out the purposes for which the assessments have been levied without the prior issuance of notes, provided that the payments under those contracts do not fall due prior to the time by which the assessments are to be collected. The board may issue and sell bonds with a maximum maturity of twenty years in anticipation of the collection of the assessments and may issue notes in anticipation of the issuance of the bonds, which notes and bonds, as public obligations, shall be issued and sold as provided in Chapter 133. of the Revised Code.

HISTORY: 127 v 165 (Eff 9-4-57); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**§ 6117.26 Repealed**, 148 v H 549, § 2 [GC § 6602-4a; 110 v 338; 112 v 275(286); Bureau of Code Revision, 10-1-53; 132 v S 231]. Eff 3-12-2001.

This section concerned revenue from premiums on bonds.

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**§ 6117.27 Contract for construction; modifications.**

**Text of Statute**

After the issuance and sale of bonds or certificates of indebtedness, as provided in sections 6117.01 to 6117.45, inclusive, of the Revised Code, the board of county commissioners shall enter into a written contract in accordance with sections 307.86 to 307.92, inclusive, of the Revised Code. The contract shall be between the board and the bidder, and the board shall pay the contract price in cash. Such payment may be made in proper installments as the work progresses. When there is reason to believe that there is collusion or combination among the bidders, the bids of those concerned therein shall be rejected. Whenever it becomes necessary, in the opinion of such board, in the prosecution of any such work or improvements, to make alterations or modifications in such contract, such alterations or modifications shall only be made by such board by resolution. Such resolution shall be of no effect until the prices to be paid for work or material, or both, caused by such alterations or modifications, have been agreed upon in writing and signed by the contractor and said board. No contractor for any such work shall recover anything for additional work or materials required by any alterations or modifications or for any other cause due to such alterations or modifications, unless such contract is made as provided in this section, nor shall he in any event recover for such work or materials or other cause more than the agreed price. The money derived from the lawfully authorized bonds or certificates of indebtedness sold as provided in section 6117.25 of the Revised Code, shall not thereafter be considered unappropriated until the county is fully discharged from such contract.

HISTORY: GC § 6602-5; 107 v 440, § 5; 112 v 275(286); Bureau of Code Revision, 10-1-53; 132 v H 428. Eff 12-9-67.

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**§ 6117.28** Landowners may petition for improvement; tentative assessment.

**Text of Statute**

Whenever the owners of all the lots and lands to be assessed for any sanitary or drainage facility improvement provided for in this chapter, by petition in writing, request the board of county commissioners to provide for the acquisition or construction, maintenance, and operation of the improvement, describing the improvement and the lots and lands owned by them respectively to be assessed to pay the cost of acquisition or construction, maintenance, and operation of the improvement and consenting that their lots and lands may be assessed to pay the cost of the acquisition or construction of the improvement and of its maintenance



and operation as provided in this chapter, and waive all legal notices otherwise required, the board may have the county sanitary engineer prepare, or otherwise cause to be prepared, the necessary plans, specifications, and estimate of cost of the acquisition or construction, maintenance, and operation of the improvement and a tentative assessment. When the owners state, in writing, that they have examined the estimate of cost and tentative assessment, that they have no objections to them, and that, in case bonds are proposed to be issued prior to the acquisition or construction of the improvement, they waive their right or option to pay the assessments in cash, the board may proceed as provided in this chapter to cause the improvement to be acquired or constructed and to cause provision to be made for the payment of the cost of its acquisition or construction, maintenance, and operation, except that none of the notices otherwise required by law need be given and no opportunity need be provided for the filing of objections to the improvement, its character and termini, the boundaries of the assessment district, or the tentative assessment or, if bonds are issued prior to the acquisition or construction of the improvement, for paying the assessments in cash. The board may proceed to issue or incur public obligations in the required amount, complete the acquisition or construction of the improvement, and levy and collect the assessments authorized by this chapter. No person or public agency shall have the right to appeal from any decision or action of the board in the matter except refusal by the board to proceed with the improvement.

The tentative assessment provided for in this section shall be for the information of property owners and shall not be levied or certified to the county auditor for collection. On completion of the improvement, its cost shall be determined, and the county sanitary engineer shall prepare, or otherwise cause to be prepared, a revised assessment based on the actual cost and in substantially the same proportion as the tentative assessment. The board shall confirm and levy the revised assessment and certify it to the county auditor for collection.

HISTORY: GC § 6602-6; 107 v 440, § 6; 112 v 275(287); Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.29 Cost shall include incidental expense.**

##### **Text of Statute**

The cost of any improvement provided for in this chapter and the cost of its maintenance and operation shall include, in addition to the cost of its acquisition or construction, the cost of engineering, necessary publications, inspection, interest on public obligations, and all other items of cost incident to the improvement as described in division (B) of section 133.15 of the Revised Code. The county may pay from available county funds any part of the cost of the improvement and any part of the cost of its maintenance and operation if the board of county commissioners considers the payment to be just.

HISTORY: GC § 6602-7; 107 v 440, § 7; Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.30 Assessment of cost.**

##### **Text of Statute**

The cost of the acquisition or construction of sanitary or drainage 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.

HISTORY: GC § 6602-8; 107 v 440, § 8; 112 v 275(288); Bureau of Code Revision, 10-1-53; 127 v 622 (Eff 9-17-57); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.31 Payment of costs and expenses.**

##### **Text of Statute**

Upon the completion of any improvement under sections 6117.01 to 6117.45, inclusive, of the Revised Code, the actual cost



thereof shall be ascertained and to such actual cost shall be added an amount equal to the interest accrued and to accrue before the first installment of such assessment is collected upon certificates of indebtedness and upon bonds authorized by such sections or upon the contribution of the county to be paid from the assessment under an agreement pursuant to section 6121.13 of the Revised Code, between the county and the Ohio water development authority, for the construction of an improvement for which the county can levy assessments as provided in Chapter 6117. of the Revised Code, and the sum so arising, less the portion thereof to be paid by the county at large, shall be assessed against the lots and parcels of land within the assessment district found to be benefited by such improvement. For the purpose of paying the county sanitary engineer provided for in section 6117.01 of the Revised Code, and for paying his assistants and all of his other necessary expenses, and for the purpose of paying that part of the cost of the improvement to be paid by the county or of the interest to accrue thereon, the board of county commissioners may levy taxes in addition to all other taxes authorized by law. Such levy shall be subject to all the limitations provided by law upon the aggregate amount, rate, maximum rate, and combined maximum rate of taxation.

HISTORY: GC § 6602-8a; 107 v 440, § 9; 112 v 275(288); Bureau of Code Revision, 10-1-53; 133 v S 466. Eff 4-2-70.

The provisions of § 3 of SB 466 (133 v --) read as follows:

SECTION 3. Any proceeding pending at the time this act becomes effective for the levy and collection of special assessments which was commenced under the provisions of any existing section of the Revised Code and for which the permanent financing in anticipation of the collection thereof has not been completed shall be subject to and affected by the amendments made by this act, notwithstanding any provision to the contrary in a resolution or ordinance of the political subdivision or body politic and corporate levying and collecting the assessments.

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**[§ 6117.31.1] § 6117.311 Levying of taxes and issuing of bonds.**

**Text of Statute**

For the purpose of paying for a part or all of the cost of any improvement under this chapter in a sewer district created under the provisions of section 6117.01 of the Revised Code, or in a designated subdistrict thereof, the board of county commissioners may levy a tax under Chapter 5705. of the Revised Code upon all of the property listed and assessed for taxation in such sewer district or subdistrict and may authorize, issue, and execute bonds under the provisions of Chapter 133. of the Revised Code for and on behalf of said sewer district or subdistrict as an indebtedness of said district or subdistrict payable from taxes which the board of county commissioners shall levy upon all of the property listed and assessed for taxation therein.

Bonds shall be authorized and issued only after approval by a vote of the electors of such sewer district or subdistrict and the total net indebtedness created or incurred and outstanding under this section shall not exceed five per cent of the tax duplicate valuation of the district or subdistrict. The board of county commissioners shall pass its resolution declaring the necessity for the improvement and the submission of the question of whether to levy a tax or the question of whether to issue bonds to the electors of the sewer district or subdistrict by unanimous vote of all its members, and shall cause to be filed with the county auditor and the board of elections of the county an accurate map or plat showing the boundaries of any such sewer district or subdistrict at least seventy-five days prior to the passage of such resolution.

If the entire cost of the improvement is to be paid from the proceeds of a bond issue under the provisions of this section and Chapter 133. of the Revised Code, the board of county commissioners need not provide for a public hearing or take any proceedings under the provisions of section 6117.06 or 6117.07 of the Revised Code.

Bonds issued under this section shall not be considered within the debt limitations of the county prescribed by section 133.05 of the Revised Code.

For purposes of this section, such sewer district or subdistrict is constituted a "subdivision" and "taxing unit"; the board of county commissioners is the "taxing authority" and "bond authorizing authority" thereof; and the county auditor is the "fiscal officer" thereof, within the purview of Chapters 133. and 5705. of the Revised Code.

No power granted in this section nor the exercise thereof shall be construed as limiting the authority or jurisdiction of the board of county commissioners or of any other political subdivision to take any action in a sewer district or subdistrict under any other sections of the Revised Code.

HISTORY: 129 v 1077 (Eff 10-12-61); 130 v 1405 (Eff 8-19-63); 138 v H 1062. Eff 3-23-81.

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**§ 6117.32 Revised assessment; additional assessment.**

**Text of Statute**



The county sanitary engineer, upon the completion of any improvement in accordance with this chapter, shall prepare, or otherwise cause to be prepared, and shall present to the board of county commissioners a revised assessment based on the tentative assessment previously ratified by the board for the improvement or, if the tentative assessment has been revised by order of court, based on the revised tentative assessment, the assessment levied on each piece of property being modified in substantially the same proportion as the actual cost of the improvement, including incidental costs, bears to the estimated cost on which the tentative assessment was based. No notice of the revised assessment shall be given unless the actual cost exceeds the estimated cost. If the actual cost exceeds the estimated cost, notice shall be given to all property owners within the assessment district and shall be published as provided by section 6117.07 of the Revised Code for amendments of the tentative assessment, and any property owner may appeal as provided for in the case of a tentative assessment. The board shall confirm the revised assessment, and, when so confirmed, it shall be final and conclusive. If an appeal has been made, that confirmation shall be subject to the finding of the court.

The board, at intervals it considers expedient, may levy an additional assessment on the lots and parcels of land assessed for the improvement, including state land, in order to pay the cost of the maintenance, repair, and operation of the improvement after its completion. No further notice of that additional assessment shall be necessary unless the amount of it exceeds ten per cent of the original cost of acquiring or constructing the improvement. If that additional assessment exceeds ten per cent of the original cost of acquiring or constructing the improvement, the method and manner of making that additional assessment, together with the notice of it, shall be the same as provided in this chapter for the original assessment. That additional assessment shall be subject to any applicable provisions of section 6117.33 of the Revised Code, provided that the assessment may bear interest at a rate as the board determines to be appropriate.

HISTORY: GC § 6602-8b; 107 v 440, § 10; 108 v PtI, 368; 112 v 275(289); Bureau of Code Revision, 10-1-53; 127 v 762 (Eff 8-27-57); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

### **§ 6117.33 Certification of assessments.**

#### **Text of Statute**

On or before the second Monday in September, annually, the board of county commissioners shall certify all of the assessments provided for in section 6117.32 of the Revised Code to the county auditor, including all assessments deferred pursuant to section 6117.061 [6117.06.1] of the Revised Code, stating the amount and the time of payment thereof, and in accordance therewith the auditor shall record the same in a book to be known as the "sewer improvement record" of said county, showing separately the assessments to be collected forthwith and the assessments whose collection has been deferred by the board pursuant to section 6117.061 [6117.06.1] of the Revised Code. Such assessment, including the assessments deferred by the board pursuant to section 6117.061 [6117.06.1] of the Revised Code, shall bear interest at the rate that the bonds authorized by section 6117.25 of the Revised Code bears, or at the rate that the contribution of the county to be paid from the assessment under an agreement pursuant to section 6121.13 of the Revised Code, between the county and the Ohio water development authority, bears, and shall be a lien upon the lots and lands so assessed from the date of such record until such assessments are paid, and shall be collected in annual or semiannual installments within a period of not more than forty years, provided that interest on deferred assessments shall terminate when all of the bonds issued by the board in anticipation of such deferred assessments have been paid in full. If any such assessment is twenty-five dollars or less, or whenever the unpaid balance of any such assessment is twenty-five dollars or less, the same shall be paid in full and not in installments at the time the first or next installment would otherwise become payable. The several installments of such assessments which have not been deferred for collection pursuant to section 6117.061 [6117.06.1] of the Revised Code and interest on deferred assessments shall be placed upon the tax duplicate of the county for collection as they become due commencing with the first duplicate prepared after the assessments have been so certified, and shall be collected the same as other taxes, and shall be subject to the same penalties and interest. In case bonds have not been sold or an agreement between the county and the Ohio water development authority has not been entered into to pay the cost of the improvement the amount assessed against any lot or parcel of land may be paid within thirty days from the confirmation of the revised assessment.

The board shall, annually, during the month of August, review all assessments which have been deferred for collection pursuant to section 6117.061 [6117.06.1] of the Revised Code as shown upon the auditor's "sewer improvement record" and shall determine whether, in view of changed circumstances concerning the property since the date of the original deferment, it is no longer inequitable to certify such assessment or any portion thereof to the county auditor for collection. On or before the second Monday in September, annually, the board shall direct the county auditor to place on the tax duplicate for collection such deferred assessments or portions thereof as the board determines should no longer be deferred, or which the property owner has requested to be collected, and thereupon the county auditor shall place the same upon the first duplicate prepared by him thereafter and shall collect the same as other taxes in such number of annual or semiannual installments within a period ending not later than the thirty-ninth year after the year in which the nondeferred assessments for such improvement were first collected, as directed by the board, provided that the number of installments shall not be less than that required to coincide with the remaining principal payments on the bonds issued in anticipation of the collection of such assessments and in no event shall the payment period be less than five years. On or before the second Monday of September of the twentieth year following the adoption of the resolution confirming the revised assessment, the board shall direct the county auditor to place on the tax duplicate for collection all deferred assessments or parts thereof confirmed by such resolution which the board has not theretofore directed the auditor to collect, and thereupon the auditor shall place the same upon the first tax duplicate prepared by him thereafter and shall collect the same as



other taxes in such number of annual or semiannual installments within a period of not more than twenty and not less than five years as directed by the board, provided that the final installment shall not be made payable earlier than the payment date of the final installment of the nondeferred assessments for such improvement. All assessments when collected, together with all interest thereon, shall be applied respectively to the purposes for which such assessments have been made and to no other purpose, provided that any installments of deferred assessments collected by the treasurer subsequent to the retirement of the bonds issued in anticipation of the collection of such deferred assessments, shall be allocated by him to the several county funds, including the special fund provided for by section 6117.02 of the Revised Code, in proportion to their respective contributions to the retirement and discharge of such bonds.

HISTORY: GC § 6602-8c; 107 v 440, § 11; 110 v 338; 112 v 275(289); 115 v 153; Bureau of Code Revision, 10-1-53; 129 v 1631 (Eff 10-24-61); 130 v 1406 (Eff 9-16-63); 133 v H 276 (Eff 10-30-69); 133 v S 466 (Eff 4-2-70); 139 v H 379, Eff 9-21-82.

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**§ 6117.34** EPA may order corrective action.

**Text of Statute**

Whenever the legislative authority or board of health, or the officers performing the duties of the legislative authority or board of health, of a municipal corporation, the board of health of a general health district, or a board of township trustees makes complaint, in writing, to the environmental protection agency that unsanitary conditions exist in any county, the agency's director forthwith shall inquire into and investigate the conditions complained of. If, upon investigation of the complaint, the director finds that it is necessary for the public health and welfare that sanitary or drainage facilities be acquired or constructed, maintained, and operated to serve any territory outside municipal corporations in any county, the director shall notify the board of county commissioners of the county of that finding and order that corrective action be taken. The board shall obey the order and proceed as provided in this chapter to establish a county sewer district, if required, to provide the necessary funds, to acquire or construct the facilities, and to maintain and operate the facilities, as required by the order and in a manner that is satisfactory to the director. Any part or all of the cost of the facilities or of the maintenance and operation of the facilities may be assessed upon the benefited properties as provided in this chapter.

HISTORY: GC § 6602-8d; 107 v 440, § 12; 112 v 275(290); Bureau of Code Revision, 10-1-53; 134 v S 397 (Eff 10-23-72); 148 v H 549, Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**§ 6117.35 Repealed** . 134 v S 397, § 2 [GC § 6602-8e; 107 v 440; 112 v 275; Bureau of Code Revision, 10-1-53]. Eff 10-23-72.

This section concerned appeal of an order made by the director of health.

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**§ 6117.36** Order may be enforced by a writ of mandamus.

**Text of Statute**

If the board of county commissioners fails after thirty days after the notice and order given to it by the director of environmental protection to perform any act required of it by sections 6117.01 to 6117.40 of the Revised Code, and by any such order and notice of the director, such order may be enforced by a writ of mandamus issued by any court authorized to issue such writs.

HISTORY: GC § 6602-8f; 107 v 440, § 14; 112 v 275(290); Bureau of Code Revision, 10-1-53; 134 v S 397, Eff 10-23-72.

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**§ 6117.37** Recovery of fines.

**Text of Statute**

An action may be commenced and prosecuted for the recovery of any fine, forfeiture, or penalty mentioned in sections 6117.01 to 6117.40, inclusive, of the Revised Code, from any person liable therefor, by the prosecuting attorney of the proper county in the name of the state, in the court of common pleas of such county, or such action may be commenced and prosecuted by the attorney



general in such county or in Franklin county, as provided by law.

HISTORY: GC § 6602-8g; 107 v 440, § 15; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.38** Contract to provide sewerage or drainage outside district; acquisition of facilities.

**Text of Statute**

(A) At any time after the formation of any county sewer district, the board of county commissioners, when it considers it appropriate, on application by a person or public agency for the provision of sewerage or drainage to properties of the person or public agency located outside of the district, may contract with the person or public agency for depositing sewage or drainage from those properties in facilities acquired or constructed or to be acquired or constructed by the county to serve the district and for the treatment, disposal, and disposition of the sewage or drainage, on terms that the board considers equitable. The amount to be paid by the person or public agency to reimburse the county for costs of acquiring or constructing those facilities shall not be less than the original or comparable assessment for similar property within the district or, in the absence of an original or comparable assessment, an amount that is found by the board to be reasonable and fairly reflective of that portion of the cost of those facilities attributable to the properties to be served. The board shall appropriate any moneys received for that service to and for the use and benefit of the district. The board may collect the amount to be paid by the person or public agency in full, in cash or in installments as a part of a connection charge to be collected in accordance with division (B) or (D) of section 6117.02 of the Revised Code, or if the properties to be served are located within the county, the same amount may be assessed against those properties, and, in that event, the manner of making the assessment, together with the notice of it, shall be as provided in this chapter.

(B) Whenever sanitary or drainage facilities have been acquired or constructed by, and at the expense of, a person or public agency and the board considers it appropriate to acquire the facilities or any part of them for the purpose of providing sewerage or drainage service to territory within a sewer district, the county sanitary engineer, at the direction of the board, shall examine the facilities. If the county sanitary engineer finds the facilities properly designed and constructed, the county sanitary engineer shall certify that fact to the board. The board may determine to purchase the facilities or any part of them at a cost that, after consultation with the county sanitary engineer, it finds to be reasonable.

Subject to and in accordance with this division and division (B) or divisions (C), (D), and (E) of section 6117.06 of the Revised Code, the board may purchase the facilities or any part of them by negotiation. For the purpose of paying the cost of their acquisition, the board may issue or incur public obligations and assess the entire cost, or a lesser designated part of the cost, of their acquisition against the benefited properties in the manner provided in this chapter for the construction of original or comparable facilities.

HISTORY: GC § 6602-8h; 107 v 440, § 16; 108 v PtI, 368; 112 v 275(291); Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**§ 6117.39** Appropriation or purchase of property.

**Text of Statute**

Whenever, in the opinion of the board of county commissioners, it is necessary to acquire real estate or any interest in real estate for the acquisition, construction, maintenance, or operation of any sewer, drainage, or other improvement authorized by this chapter, or to acquire the right to construct, maintain, and operate the sewer, drainage, or other improvement in and upon any property within or outside of a county sewer district, it may purchase the real estate, interest in real estate, or right by negotiation. If the board and the owner of the real estate, interest in real estate, or right are unable to agree upon its purchase and sale, or the amount of damages to be awarded for it, the board may appropriate the real estate, interest, or right in accordance with sections 163.01 to 163.22 of the Revised Code, except that the board, in the exercise of the powers granted by this section or any other section of this chapter, may not appropriate real estate or personal property owned by a municipal corporation.

HISTORY: GC § 6602-8i; 107 v 440, § 17; 112 v 275(292); Bureau of Code Revision, 10-1-53; 131 v 1429 (Eff 1-1-66); 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.



**§ 6117.40 Board may construct sewer within municipal corporation.****Text of Statute**

Whenever in the opinion of the board of county commissioners it becomes necessary to construct a sewer within the boundaries of a municipal corporation for the service of sewer districts wholly outside of such municipal corporation, the board may construct such sewer in the streets and alleys of such municipal corporation but shall restore all such streets and alleys to their original condition, and the cost thereof shall be a part of the cost of such sewer.

Prior to the preparation of plans for such improvement, such municipal corporation shall be given an opportunity to co-operate in the construction and use of such sewer as provided in section [6117.03](#), [6117.04](#), or [6117.41](#) of the Revised Code.

HISTORY: GC § 6602-9; 112 v 275(292); Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.41 Joint construction and use of sanitary or drainage facilities.****Text of Statute**

At any time after the formation of any county sewer district, the board of county commissioners may enter into a contract, upon the terms and for the period of time that are mutually agreed upon, with any other public agency to prepare all necessary plans and estimates of cost and to acquire or construct any sanitary or drainage facilities that are to be used jointly by the contracting parties, and to provide for the maintenance, operation, and joint use by the contracting parties of those facilities or the maintenance, operation, and joint use of any suitable existing sanitary or drainage facilities belonging to either of the contracting parties.

HISTORY: GC § 6602-10; 107 v 59; Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § [6103.40](#).

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**§ 6117.42 Compensation paid to county or agency acquiring, constructing, operating or maintaining facilities.****Text of Statute**

All contracts under section [6117.41](#) of the Revised Code shall provide for the payment of compensation to the county or other public agency owning, acquiring, or constructing, or agreeing to acquire or construct, the sanitary or drainage facilities to be jointly used in an amount agreed upon as the other party's share of the cost of acquiring or constructing the facilities. The contract also shall provide for payment of compensation to the county or other public agency owning, acquiring, or constructing the facilities and operating and maintaining them in an amount agreed upon as the other party's share of the cost of operating and maintaining them or, in lieu of all other or differing payments, and\* agreed price per unit of flow. A county or other public agency owning, acquiring, or constructing, or agreeing to acquire or construct, any of the facilities and agreeing to their use by another public agency shall retain full control and management of the acquisition, construction, maintenance, and operation of the facilities, unless otherwise provided in the contract and except, in the case of a county, when conveyed to a municipal corporation as provided in division (B) of section [6117.05](#) of the Revised Code.

HISTORY: GC § 6602-11; 107 v 59, § 2; 110 v 338; Bureau of Code Revision, 10-1-53; 134 v S 397 (Eff 10-23-72); 148 v H 549. Eff 3-12-2001.

\* So in enrolled bill, first paragraph.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § [6103.40](#).

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**§ 6117.43 Methods for paying compensation.****Text of Statute**

A county or other public agency contracting as provided in sections [6117.41](#) and [6117.42](#) of the Revised Code for the joint use of



any sanitary or drainage facilities acquired or constructed, or to be acquired or constructed, by another public agency may provide for payment of the agreed compensation by the levy of taxes or special assessments or from sanitary sewer or drainage rates and charges, if and to the extent that the public agency is authorized by the laws governing it in the acquisition, construction, maintenance, or operation of the facilities to provide for payment of the costs in respect of which the compensation is due from those sources, and may issue or incur public obligations as provided by those laws and pay the debt charges on those obligations from those sources if and to the extent so authorized.

HISTORY: GC § 6602-12; 107 v 59, § 3; 122 v 302; Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.44 Credit of compensation to proper fund.**

##### **Text of Statute**

A county or other public agency receiving the compensation provided for in section 6117.42 of the Revised Code shall credit the amount so received to the proper fund to be used for the acquisition, construction, or operation and maintenance, as the case may be, of the sanitary or drainage facilities or for other authorized purposes.

HISTORY: GC § 6602-13; 107 v 59, § 4; Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.45 Prohibitions.**

##### **Text of Statute**

No person or public agency shall tamper with or damage any sanitary or drainage facility acquired or constructed by a county under this chapter or any apparatus or accessory connected with it or pertaining to it, or make any connection into or with the facility, without the permission of the board of county commissioners or in a manner or for a use other than as prescribed by the board. No person or public agency shall refuse to permit the inspection by the county sanitary engineer of any such connection. No person or public agency shall violate any other provision of this chapter.

All fines collected under section 6117.99 of the Revised Code shall be paid to the county treasurer and credited to the fund that the board determines to be most appropriate after consideration of the nature and extent of the particular violations.

HISTORY: Bureau of Code Revision, 10-1-53; 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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#### **§ 6117.46 Construction of trunk or main sewers in counties.**

##### **Text of Statute**

When the director of environmental protection finds that a trunk or main sewer is necessary in a county for sanitary purposes, the board of county commissioners of such county may make surveys thereof and prepare plans and specifications thereof. Upon approval by the director of such plans and specifications, the board may construct and maintain said trunk or main sewer or part thereof within or without the limits of a municipal corporation, regulate the tapping thereof by lateral sewers, and prescribe the conditions of such tapping.

HISTORY: RS § 4510-67; 97 v 533; GC § 6596; Bureau of Code Revision, 10-1-53; 134 v S 397. Eff 10-23-72.

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#### **§ 6117.47 Acquiring property for construction and maintenance of sewers.**



**Text of Statute**

The board of county commissioners may acquire by purchase or appropriation proceedings all real and personal property necessary for the proper construction and maintenance of a trunk or main sewer provided for in section 6117.46 of the Revised Code. The board may occupy any public road, street, avenue, or alley for such trunk or main sewer or part thereof.

HISTORY: RS § 4510-68; 97 v 533, § 2; GC § 6597; Bureau of Code Revision. Eff 10-1-53.

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**§ 6117.48 Appropriation of property.****Text of Statute**

When it is necessary to procure real estate or a right of way or an easement therein for a trunk or main sewer provided for in section 6117.46 of the Revised Code, and the owners thereof are unable to agree upon the compensation therefor, the board of county commissioners may appropriate it in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code.

HISTORY: RS § 4510-68; 97 v 533, § 2; GC §§ 6598, 6599; Bureau of Code Revision, 10-1-53; 131 v 1429. Eff 1-1-66.

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**§ 6117.49 Sale or other disposition of facilities.****Text of Statute**

(A) If the board of county commissioners determines by resolution that the best interests of the county and those served by the sanitary or drainage facilities of a county sewer district so require, the board may sell or otherwise dispose of the facilities to another public agency or a person. The resolution declaring the necessity of that disposition shall recite the reasons for the sale or other disposition and shall establish any conditions or terms that the board may impose, including, but not limited to, a minimum sales price if a sale is proposed, a requirement for the submission by bidders of the schedule of rates and charges initially proposed to be paid for the services of the facilities, and other pertinent conditions or terms relating to the sale or other disposition. The resolution also shall designate a time and place for the hearing of objections to the sale or other disposition by the board. Notice of the adoption of the resolution and the time and place of the hearing shall be published once a week for two consecutive weeks in a newspaper of general circulation in the sewer district and in the county. The public hearing on the sale or other disposition shall be held not less than twenty-four days following the date of first publication of the notice. A copy of the notice also shall be sent by first class or certified mail, on or before the date of the second publication, to any public agency within the area served by the facilities. At the public hearing, or at any adjournment of it, of which no further published or mailed notice need be given, the board shall hear all interested parties. A period of five days shall be given following the completion of the hearing for the filing of written objections by any interested persons or public agencies to the sale or other disposition, after which the board shall consider any objections and by resolution determine whether or not to proceed with the sale or other disposition. If the board determines to proceed with the sale or other disposition, it shall receive bids after advertising once a week for four consecutive weeks in a newspaper of general circulation in the county and, subject to the right of the board to reject any or all bids, may make an award to a responsible bidder whose proposal is determined by the board to be in the best interests of the county and those served by the facilities.

(B) A conveyance of sanitary or drainage facilities by a county to a municipal corporation in accordance with division (B) of section 6117.05 of the Revised Code may be made without regard to division (A) of this section.

HISTORY: 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**§ 6117.51 Require sewer connections where available and accessible.****Text of Statute**

If the board of health of the health district within which a new public sewer construction project is proposed or located passes a resolution stating that the reason for the project is to reduce or eliminate an existing health problem or a hazard of water pollution, the board of county commissioners of the county, by resolution, may order the owner of any premises located in a sewer district in the county, the owner's agent, lessee, or tenant, or any other occupant of the premises to connect the premises to the sewer for



the purpose of discharging sewage or other waste that the board determines is originating on the premises, to make use of the connection, and to cease the discharge of the sewage or other waste into a cesspool, ditch, private sewer, privy, septic tank, semipublic disposal system as defined in division (B)(1)(a) of section 3709.085 [3709.08.5] of the Revised Code, or other outlet if the board finds that the sewer is available for use and is accessible to the premises following a determination and certification to the board by a registered professional engineer designated by it as to the availability and accessibility of the sewer. This section does not apply to any of the following:

(A) Any discharge authorized by a permit issued under division (J) of section 6111.03 of the Revised Code other than a discharge to or from a semipublic disposal system as defined in division (B)(1)(a) of section 3709.085 [3709.08.5] of the Revised Code;

(B) Wastes resulting from the keeping of animals;

(C) Any premises that are not served by a common sewage collection system when the foundation wall of the structure from which sewage or other waste originates is more than two hundred feet from the nearest boundary of the right of way within which the sewer is located;

(D) Any premises that are served by a common sewage collection system when both the foundation wall of the structure from which the sewage or other waste originates and the common sewage collection system are more than two hundred feet from the nearest boundary of the right-of-way within which the public sewer is located.

The board shall not direct an order under this section to a resident tenant unless it determines that the terms of the tenancy are such that the owner lacks sufficient rights of access to permit the owner to comply with the terms of the order.

An owner, agent, lessee, tenant, or occupant shall comply with the order of the board within ninety days after the completion of service of the order upon that person as provided in this section. The board, upon written application filed prior to the expiration of the ninety-day period, may waive compliance with any order either temporarily or permanently and conditionally or unconditionally.

In its resolution, the board shall direct its clerk, or the clerk's designee, to serve its order upon the owner, agent, lessee, tenant, or occupant. Service of the order shall be made personally, by leaving the order at the usual place of residence with a person of suitable age and discretion then residing therein, or by certified mail addressed to the owner, agent, lessee, tenant, or occupant at that person's last known address or to the address to which tax bills are sent. If it appears by the return of service or the return of the order forwarded by certified mail that the owner, agent, lessee, tenant, or occupant cannot be found, that person shall be served by publication of the order once in a newspaper of general circulation within the county, or if that person refuses service, that person shall be served by ordinary mail addressed to that person's last known address or to the address to which tax bills are sent. The return of the person serving the order or a certified copy of the return, or a returned receipt for the order forwarded by certified mail accepted by the addressee or anyone purporting to act for the addressee, is prima-facie evidence of the service of the order under this section. The return of the person attempting to serve the order, or the return to the sender of the order forwarded by certified mail with an indication on the return of the refusal of the addressee to accept delivery, is prima-facie evidence of the refusal of service.

No owner, agent, lessee, tenant, or occupant shall violate an order issued under this section. Upon request of the board, the prosecuting attorney shall prosecute in a court of competent jurisdiction any owner, agent, lessee, tenant, or occupant who violates an order issued under this section. Each day that a violation continues after conviction for the violation of an order issued under this section and the final determination thereof is a separate offense. The court, for good cause shown, may grant a reasonable additional period of time for compliance after conviction.

Any owner, agent, lessee, tenant, or occupant violating an order issued under this section also may be enjoined from continuing in violation. Upon request of the board, the prosecuting attorney shall bring an action in a court of competent jurisdiction for an injunction against the owner, agent, lessee, tenant, or occupant violating an order.

The Ohio water development authority created under section 6121.02 of the Revised Code, in addition to its other powers, has the same power and shall be governed by the same procedures in a waste water facilities service area, or in any area adjacent to a public sewer operated by the authority, as a board of county commissioners in a county sewer district under this section, except that the authority shall act by order, and the attorney general, upon request of the authority, shall prosecute any person who violates an order of the authority issued under this section.

HISTORY: 136 v S 311 (Eff 8-25-76); 143 v H 28 (Eff 9-22-89); 148 v S 198. Eff 9-22-2000.

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**§ 6117.60 Amendments to chapter are subject to § 4 of HB 549.**

#### **Text of Statute**

It is the intent of the general assembly that the amendments made to this chapter by Sub. H.B. 549 of the 123rd general assembly



are subject to section 4 of that act. This section does not affect the application of section 3 of that act to sections 1 and 2 of that act.

HISTORY: 148 v H 549. Eff 3-12-2001.

See provisions, §§ 3, 4 of HB 549 (148 v --) following RC § 6103.40.

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**§ 6117.99 Penalty.**

**Text of Statute**

Whoever violates section 6117.45 or 6117.51 of the Revised Code is guilty of a minor misdemeanor.

HISTORY: Bureau of Code Revision, 10-1-53; 136 v S 311. Eff 8-25-76.

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