

## SUMMARY OF OHIO CONSERVANCY DISTRICT DITCH LAW<sup>1</sup>

See ODNR Division of Water Fact Sheet 93-25, "Ohio's Conservancy Districts"  
<http://www.dnr.state.oh.us/water/pubs/pdfs/fctsht25.pdf>

### Recent legislative activity

Governor Taft signed Substitute House Bill 617 sponsored by Rep. J. Donald Mottley (R-West Carrollton), on June 21, 2000 which updates the provisions of the Conservancy District Law for both technical and substantive purposes, including modifications to notifications and other procedures relative to appraisals, anticipatory notes, bonds, and assessments.

The LSC bill analysis is available at: <http://www.lsc.state.oh.us/analyses/h0617-rs.pdf>

One change to note: the change in definition of publication where formerly, the conservancy district was required to run a public notice for three consecutive weeks in each of two newspapers of different political affiliations (if two existed). The bill now requires publication once in a newspaper of general circulation in the county.

Note: these Conservancy District "Cliff's notes" below only summarize parts of the law relevant to ditch-related projects and may not be complete (there were a lot of sections that did not see relevant).

### Organization and purposes of conservancy districts (6101.04)

- “ Any area or areas situated in one or more counties may be organized as a conservancy district for any of the following purposes:
  - Preventing floods
  - Regulating stream channels by changing, widening, and deepening the stream channels;
  - Reclaiming or filling wet and overflowed lands;
  - Providing for irrigation where it may be needed
  - Regulating the flow of streams and conserving their waters
  - Diverting or eliminating watercourses;
  - Providing water for domestic, industrial and public use
  - Providing for the collection and disposal of sewage and other liquid wastes produced within the district;
  - Arresting erosion along Lake Erie

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<sup>1</sup> This document is intended to summarize the Ohio Revised Code sections pertaining to Ohio's Conservancy District Ditch Law (ORC 6101) so that the public can better understand the legal process involved in initiating and implementing ditch projects by Conservancy Districts. This document is not an official legal review or opinion and should not substitute for formal legal advice or counsel.

#### Appointment of board of directors (6101.10)

- “ The court of common pleas appoints the board of directors of the conservancy district for five year terms (3 per district)
- “ If a conservancy district includes all or parts of 16 counties or more, the court (where petition to create the District was originally filed) appoints five person from different counties.

#### Powers of board of directors of Conservancy Districts (6101.15)

- “ In order to accomplish the purposes of the conservancy district, the board of directors may do the following:
  - Clean out, straighten, widen, alter, deepen or change the course or terminus of any ditch, drain, sewer, river, watercourse, pond, lake, creek or natural or artificial stream located in or out of the district;
  - Fill up any abandoned or altered ditch, drain, sewer, river, watercourse, pond, lake, creek, or natural or artificial stream, and concentrate, divert, or divide the flow of water in or out of the district;
  - Construct, acquire, operate, and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, wells, intakes, pipe lines, purification works, treatment and disposal works, pumping stations and siphons, and any other works and improvements considered necessary to accomplish the purposes of the district or to construct, preserve, operate, or maintain the works in or out of the district.
  - Conduct on its own or in combination with other entities, water quantity and quality studies and other water monitoring activities that do not conflict with similar studies or activities by other agencies. A written report of the findings of any study or activity, or a copy of it, shall be submitted to the director of environmental protection.
  - Many other functions involving bridges, roads, fences, water supplies etc. which are spelled out in detail in ORC § 6101.15.

#### Official plan for district; hearing; approval by EPA (6101.13)

- “ Conservancy districts are required to prepare a plan for improvements within two years of establishing the district. The plan must include the maps, profiles, plans, and other data and descriptions necessary for doing the work, etc.
- “ Upon completion of the plan, the board must file a copy of it with the EPA (does not specify Ohio or U.S.) which may approve or reject any provisions of the plan related to water supplies or waste disposal.
  - The agency must consider public health, compliance with air and water quality standards and regulations and solid waste disposal requirements.
  - If the agency rejects the provisions or refers them back for amendment, the board must then prepare an amended provision.
- “ Upon completion of the plan, notice must be published (once in newspaper of general circulation) and filed with the clerk of common pleas court.

- .. The public notice will announce the times and places for the hearing (to be held within 20-30 days of publication) for objections/opposition to the plan.
- .. All objections must be submitted in writing and filed with the conservancy district's office (at the office) within 20 days of the public notice.
- .. Anyone who objects to the final plan (which is filed with the clerk of courts) can file their objections in writing.
  - o The clerk of the court must then set up a hearing within 20-30 days where the court can hear objections and either approve, reject or refer the plan back to the board.
- .. The conservancy district has authority to devise, prepare, execute, maintain and operate all works or improvements necessary to complete, operate the plan.

#### Dominant right of eminent domain (6101.17)

- .. Conservancy districts have a dominant right of eminent domain over the eminent domain rights of railroad, telephone, power and other companies, corporations, and local governments.
  - o Due care must be taken to prevent damage to utilities

#### Appraisal of benefits and damages (6101.28)

- .. The board of appraisers must appraise the benefits of every kind to all property in (and out) of the district as a result of the creation of the district and execution of the official plan.
- .. The board of appraisers must also appraise the damages sustained and the value of the land and other property necessary to be taken by the district.
  - o In appraising the benefits and damages, the board of appraisers can consider on the effect of the execution of the official plan
  - o It may also give consideration and credit to any other works or improvements already constructed which form a useful part of the work of the district according to the official plan.

#### Notice of hearing on appraisals (6101.32)

- .. Upon completion of the appraisal, the clerk of the court must give public notice in each county in the district where property is included (specific wording is provided).
- .. On or before the date of publication of the notice, the conservancy district must send a notice by first class mail with information on the right to file exceptions to the report and information on a hearing to all landowners whose property is to be taken or is damaged.
  - o The notice includes a statement that the property to be taken or damage to incur has been appraised and states that appraisal.

#### Conservancy maintenance assessment (6101.53)

- .. Conservancy Districts may levy assessments on landowners to maintain, operate and preserve ditches etc.

- “ The maintenance assessments are based on the total appraisal of benefits accruing for original construction, not to exceed 1% of the total appraised benefits in any one year (and not less than \$2). (no reference of costs compared to benefits)