

## SUMMARY OF SOIL & WATER CONSERVATION DISTRICT DITCH LAW<sup>1</sup>

Ohio Revised Code (ORC) Section (§) 1515 authorizes county Soil and Water Conservation Districts to construct “Conservation Improvement Projects” (often referred to as “Senate Bill 160” projects). These “Cliff’s Notes” summarize this process outlined in Ohio law.

### Infringement of rights (1515.13)

- “ Sections 1515.01 to 1515.29 do not infringe upon the rights, powers and authority vested by law in the division of wildlife.

### State may share costs of improvement by conservation district (§1515.16)

- “ ODNR, upon recommendation by the Ohio Soil & Water Conservation Commission may enter into agreements with boards of county commissioners under which the state shares the cost of construction for the project that the county constructs for a SWCD. The state share, taken from moneys allocated for such purposes, cannot exceed 50% of the non-federal cost of the project.

### Joint board of supervisors (1515.17)

- “ The supervisor of any 2 or more adjoining SWCDs may form a joint board in order to construct, maintain, or operate a ditch project<sup>2</sup> in watersheds that span more than one county. The joint board is made up of equal number of supervisors from each district. If the number is even, an additional supervisor is designated in the county where the highest assessments are made.
- “ The joint board has the same powers as a single SWCD district

### SWCD supervisors determine the project benefits and area (1515.20)

- “ “Due notice” (which is a notice published in a newspaper of general circulation within a SWCD at least twice and at least 13 days apart which states the time and place) and a public hearing is required for the project.
- “ SWCD supervisors can approve the ditch project if:
  - it will “improve water management and development;”
  - the costs are less than the benefits; and
  - it “will benefit the land in the area by promoting the economical, industrial and social development of the area.”
- “ The SWCD shall then certify the findings for the county commissioners in the watershed. This certification includes a plan and maps for the project.

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<sup>1</sup> <sup>1</sup> This document is intended to summarize the Ohio Revised Code sections pertaining to Soil & Water Conservation District Ditch Laws (ORC) so that the public can better understand the legal process involved in initiating and implementing local ditch projects. This document is not an official legal review or opinion and should not substitute for formal legal advice or counsel.

<sup>2</sup> Author is choosing to substitute “ditch project” for the legal term “improvement” which describes activities which include, but are not limited to the deepening, straightening, widening, or reconstructing a ditch, river or stream (See ORC § 6131.01 for complete definition of “improvement”)

Approval by county commissioners; adoption of state or federal regulations (1515.21)

- “ The county commissioners must approve or reject the project within 60 days of receipt of the certification.
- “ The county commissioners have the ability to revise the plan.
- “ If land acquisition or establishment of a right-of-way or easement is necessary, the board may appropriate it in accordance with Sec. 163.01 – 163.62.
- “ Board must follow sections 307.86 to 307.91. If there are any differences between local and state or federal regulations related to bids, the county must follow the state or federal regulations or procedures.

Joint board of county commissioners (1515.22)

- “ For ditch projects involving more than one county, the county commissioners form a joint board, which has the same powers as a single county board.
- “ The joint board can pay for any part of the project not paid by assessments or taxes levied for the project.
- “ The joint board must elect one member as its president and designate a clerk of one of the counties to serve as clerk for the joint board. A majority of the commissioners on the joint board constitutes a quorum. Decisions are made by a majority vote of the entire joint board.
- “ Citizens of any county in the watershed may petition for a referendum.
- “ Counties not affected by a referendum is still subject to the provisions of the resolution by the joint board of county commissioners for the SWCD.

County auditor and county treasurer as fiscal agents (1515.23)

- “ The county auditor & treasurer of one of the counties represented by a joint board serves as ex officio fiscal agent for all the participating counties. This auditor must certify the taxes or assessments for all the other counties.
- “ Taxes or assessments certified for collection is a lien on the land.
- “ The treasurer of each county will then collect the taxes or assessments for the joint board.

Assessment procedures; maintenance fund; bonds and notes (1515.24)

- “ Upon receipt of certification by the SWCD supervisors, the county commissioners may levy an assessment at a uniform or varied rate based upon the benefit to the area to pay for the cost of construction of the ditch project.
- “ The assessment (for the disposal of water) shall be calculated based upon:
  - the potential increase in productivity
  - the amount of water disposed of
  - the location of the property relative to the project
  - the value of the project to the watershed

- benefits<sup>3</sup> as defined in section 6131.01 of the Revised Code
- .. Assessments found to benefit state, county or township roads, highways or streets are assessed against the state, county, township or muni corporation payable from motor vehicle revenues.
- .. Assessments found to benefit public corporations or any political subdivision of the state shall be paid out of the respective general fund or from motor vehicle revenue.
- .. Assessments are then certified to the county auditor then the county treasurer.
- .. Any land owned by ODNR for wildlife, recreation, nature preserve, or forestry purposes is exempt from assessments if ODNR determines (after considering the purposes of the land and any relevant articles of dedication or management plans) that the land receives no benefit from the improvement. ODNR must then notify and explain to the county commissioners within 30 days of receipt of the assessment that the land is exempt. The county commissioners may appeal the exemption notification to the common please court within 30 days.
- .. The board must send a notice of assessment by first class mail to every public and private property owner.
- .. The notice must contain
  - the assessment amount,
  - a description of the method used to determine the necessity for and the amount of the proposed assessment, and
  - information on how to file an objection to the assessment within 30 days.

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<sup>3</sup> Benefit" or "benefits," except as ordered in section [6131.31](#) of the Revised Code, means advantages to land and owners, to public corporations as entities, and to the state resulting from drainage, conservation, control and management of water, and environmental, wildlife, and recreational improvements. Factors relevant to whether such advantages result include:

- 1) The watershed or entire land area drained or affected by the improvement;
- 2) The total volume of water draining into or through the improvement and the amount of water contributed by each land owner;
- 3) The use to be made of the improvement by any owner, public corporation, or the state.

Benefit or benefits includes any or all of the following factors:

- .. Elimination or reduction of damage from flood;
- .. Removal of water conditions that jeopardize public health, safety, or welfare;
- .. Increased value of land resulting from the improvement;
- .. Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other purpose incidental thereto;
- .. Providing an outlet for the accelerated runoff from artificial drainage whenever the stream, watercourse, channel, or ditch under improvement is called upon to discharge functions for which it was not designed by nature; it being the legislative intent that uplands that have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other manmade causes shall be considered as benefited by an improvement required to dispose of the accelerated flow of water from the uplands

- .. If any mailed notice is returned undelivered, the board must publish the notice to all such owners in a newspaper of general circulation within the project area once/week for 3 weeks.
- .. Upon receipt of objections, the board must then hold a final hearing on the objections.
- .. Notice of the hearing is sent only to the objectors.
  - o If any mailed notice is returned undelivered, the board must run a notice in a newspaper stating the time, place and purpose of the hearing
- .. Any owner whose objection is denied may appeal within 30 days to the common pleas court.
- .. The county commissioners can finalize the assessments after one of the following occurs:
  - o Final notice is provided by mail or publication;
  - o The assessments are upheld after the appeal;
  - o The assessments are approved in a referendum
- .. The county treasurer must deposit the assessments in the fund and report this amount to the auditor
- .. Any money collected in excess of the amount needed for construction of the ditch project is used for maintenance.
- .. The county commissioners may levy assessments for maintenance at a uniform percentage of all construction costs (up to once per year after construction).
- .. The maintenance assessment is not subject to public notice.
- .. Maintenance assessments cannot be levied when the “unencumbered balance of funds available for maintenance exceeds 20% of the cost of construction.”
  - o The board may, however, adjust the level of assessment within the 20% limitation, or temporarily suspend an assessment
- .. Commissioners may use the maintenance assessment procedures in ORC 6137 in lieu of those in this section

#### Resolution of county commissioners declaring necessity for tax levy (1515.28)

- .. County commissioners may declare by resolution that it is necessary to levy a tax upon the property in the watershed in order to pay for the ditch project.
  - o The resolution must specify
    - the levy rate,
    - the purpose
    - number of years increase is in effect
- .. The resolution must be certified by the board of elections at least 75 days before the general election and the proposal must go before the electors within the succeeding November election.