

## **Chapter 6131: SINGLE COUNTY DITCHES**

### **6131.01 Single county ditch definitions.**

As used in sections 6131.01 to [6131.64](#) of the Revised Code:

(A) "Owner" means any owner of any right, title, estate, or interest in or to any real property and includes persons, partnerships, associations, private corporations, public corporations, boards of township trustees, boards of education of school districts, the mayor or legislative authority of a municipal corporation, the director of any department, office, or institution of the state, and the trustees of any state, county, or municipal public institution. "Owner" also includes any public corporation and the director of any department, office, or institution of the state affected by an improvement but not owning any right, title, estate, or interest in or to any real property.

(B) "Land" includes any estate or interest, of any nature or kind, in or to real property, or any easement in or to real property, or any right to the use of real property, and all structures or fixtures attached to real property, including but not restricted to all railroads, roads, electric railroads, street railroads, streets and street improvements, telephone, telegraph, and transmission lines, underground cables, gas, sewage, and water systems, pipe lines and rights of way of public service corporations, and all other real property whether public or private.

(C) "Improvement" includes:

(1) The location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway;

(2) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;

(3) A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water;

(4) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run;

(5) The vacating of a ditch or drain.

(D) "Person" means natural person, firm, partnership, association, or corporation, other than public corporations.

(E) "Public corporation" or "political subdivision" means counties, townships, municipal corporations, school districts, park districts, turnpikes, toll bridges, conservancy districts, and all other governmental agencies clothed with the power of levying general or special taxes.

(F) "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.

(G) "Environmentally significant areas" mean natural land or water areas that in some degree retain or have reestablished their natural character or have other features of scientific or educational interest such as rare or endangered plant and animal populations or geologic, scenic, or other natural features and, because of their values and functions, contribute to the community's general welfare.

Effective Date: 04-09-1981 .

#### **6131.02 Authority of county commissioners to construct ditch improvements.**

When the board of county commissioners, at a regular or called session, upon the filing of a petition as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code, finds that the granting of the petition and the construction of an improvement is necessary for disposal or removal of surplus water, for controlled drainage of any land, for irrigation, for storage of water to regulate stream flow or to prevent the overflow of any land in the county, or for water conservation, and further finds that the construction of the improvement will be conducive to the public welfare and that the cost of the proposed improvement will be less than the benefits conferred by its construction, the board of county commissioners may locate, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, wall, dam, arch, change the course, location, or terminus of, straighten, deepen, remove obstructions from, or widen any ditch, drain, watercourse, floodway, river, creek, or run, or construct any levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water, or vacate any ditch or drain by proceedings as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code.

Effective Date: 04-09-1981 .

#### **6131.03 Co-ordinating system of water conservation and flood control.**

Boards of county commissioners in their respective counties, or in co-operation with any conservancy district which includes all or part of the lands of the county, or in co-operation with the proper authorities of the state or the proper authorities of the United States, may formulate, create, and construct a complete or co-ordinating system of water conservation and flood control, subject to the approval of the proper authority of the state, with full power to maintain and carry the same forward. Said boards, severally and jointly and in co-operation with the board of county commissioners of any other county, or with a conservancy district, or with the state, or with the United States, may provide their respective shares of necessary funds in accordance with law for the cost and expense of the formulation, creation, construction, and maintenance of such water conservation or flood control system, which costs and expense shall include the cost and expense of all preliminary surveys necessary to the construction and maintenance of such water conservation or flood control system.

Effective Date: 08-23-1957 .

#### **6131.04 Petition for construction of ditch improvement.**

Any owner may file a petition with the clerk of the board of county commissioners of the county in which is located a part of the land that is averred to be benefited by the construction of a proposed improvement. The

petition shall state that the construction of the improvement is necessary, will benefit the petitioner, and will be conducive to the public welfare; shall state the nature of the work petitioned for; and may ask to locate, clean, remove obstructions from, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, wall, or arch any ditch, drain, watercourse, floodway, creek, run, or river or to change the course, location, or terminus thereof, or may ask to construct a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water. The petition shall state the course and termini of the proposed improvement and the branches, spurs, or laterals, if any are petitioned for. Except as ordered under section [6131.31](#) of the Revised Code, the petition shall state that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land. The petition shall contain a list of the names and addresses, where known, of all the owners of the land that the petitioner or the county engineer claims will be benefited or damaged by the construction of the proposed improvement. The petition shall be signed by one or more owners as petitioners. If the petitioner is a public corporation or the state, the petition shall be signed by its authorized representative. If the petitioner is the county, the petition shall be filed with the clerk of the court of common pleas, the matters in the petition shall be heard by the common pleas court as if the petition had come to the court on appeal, and the clerk and the court shall do all things that sections [6131.01](#) to [6131.64](#) of the Revised Code provide that the county commissioners shall do. The court of common pleas may appoint a board of arbitrators to assume the duties of the judge. The board shall be comprised of three disinterested persons chosen by the judge, who shall designate one of the persons to be chairman. A decision of the board shall require approval of a majority of the members. Either party may appeal the board's decision to the court of common pleas, which shall decide the case on the record of arbitration.

Effective Date: 04-09-1981 .

#### **6131.05 Petition amendments.**

The petition referred to in section [6131.04](#) of the Revised Code may be amended upon the written application of any benefiting owner filed with the clerk of the board of county commissioners and upon the allowance of the application by the board of county commissioners, by an order entered on its journal.

The petition may be amended while the proceedings are pending on appeal in the court of common pleas, pursuant to the rules and laws relating to civil procedure. If the petitioner is the county, the application for amendment shall be filed with the clerk of the court of common pleas and shall be heard pursuant to the rules and laws relating to civil procedure. Any written application for amendment of the petition shall include the information required for the petition in section [6131.04](#) of the Revised Code, including names and addresses of the additional owners that the petitioner seeking amendment or the county engineer claims will be benefited or damaged by the proposed improvement. Any application, remonstrance, statement, report, or schedule filed in any improvement proceedings may be amended as a petition may be amended, as provided in this section.

Effective Date: 04-09-1981 .

#### **6131.06 Bond to be filed with petition.**

The petitioner shall file with the petition referred to in section [6131.04](#) of the Revised Code a bond in the penal sum of five hundred dollars, plus the sum of two dollars for each parcel of land in excess of two hundred parcels averred in the petition to be benefited, with at least two sureties who are freeholders of the county, or with surety by a surety company authorized to do business in this state, or with cash. The bond shall be made payable to the county, to the credit of the general drainage improvement fund, and conditioned to pay the cost of notices, plus any other incidental expenses, except the costs incurred by the engineer in making his preliminary reports if the prayer of the petition is not granted or if the petition is for any cause dismissed unless the board of county commissioners decides to pay the engineer's costs from the petitioners' bond in accordance with section [6131.09](#) of the Revised Code. The bond shall be released at the expiration of the twenty-one day appeal period provided for in section [6131.25](#) of the Revised Code after order of the commissioners at the first hearing or at the termination of the appeal.

Effective Date: 07-05-1983 .

### **6131.07 Notice and hearing on petition.**

When the petition authorized by section [6131.04](#) of the Revised Code is filed with the clerk of the board of county commissioners, the clerk shall give notice to the board of county commissioners and to the county engineer. The board shall, by an order upon its journal, fix a date and hour for the view of the proposed improvement, which shall be not fewer than twenty-five nor more than ninety days after the date on which the petition was filed with the clerk. The board shall designate a convenient place near the proposed improvement at which the view shall start. The board shall also fix a date and hour, not fewer than ten nor more than ninety days after the date set for the view, when it will hold its first hearing at a place designated by it. As soon as the dates for the view and first hearing have been fixed by the board, the clerk shall prepare and mail, at least twenty days prior to the date set for view, a written notice to the owners named in the petition and of legal record on the date of its filing, setting forth the pendency, substance, and prayer of the petition, that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land, and the date, hour, and starting place of the view and the date, hour, and location of the first hearing. For each proposed improvement, all individual notices shall be sent by the same type of mail, either certified mail, return receipt requested, or first-class mail in a five-day return envelope. Whichever method the board chooses, the words "Legal Notice" shall be printed in plain view on the face of the envelope. When the owner is not a natural person, the notice shall be mailed to its chief officer or managing agent at the usual place of business in the county. If such an owner is a foreign or domestic railroad company, regardless of whether the charter thereof prescribes the manner or place of service of process thereon, the notice shall be addressed to the property owner of record as listed by the county auditor on the general tax list. If such an owner other than a railroad company does not maintain a regular place of business in the county, then the notice shall be mailed to the nearest regular place of business of such an owner. The clerk shall cause to be published a legal notice in at least one newspaper of general circulation in the area affected by the proposed improvement, stating the name and number, if any, of the proposed improvement, the location and nature of the work proposed in the petition, and the date, time, and location of the view and first hearing. If the individual notices are sent by certified mail, the publication shall be in one issue of such newspaper, and shall not be less than thirteen days prior to the date of the view. If the individual notices are sent by first-class mail in five-day return envelopes, the publication of this newspaper notice shall be made in two issues of the newspaper, and the notice shall include a list of the names of all addressees whose individual notices were undelivered. The first such publication shall not be less than thirteen days prior to the date of the view, and the second publication shall not be less than six days prior to the date of the view. The publication shall serve as public notice to all owners of the pendency of the improvement whether or not they were individually named and notified.

Proof of notice by publication shall be verified by affidavit of the printer or other person knowing the fact, and the clerk of the board of county commissioners shall prepare a certificate showing the service of the notices by mail, both of which shall be filed with the clerk of the board of county commissioners on or before the day of the first hearing. Notices returned undelivered and receipts shall be kept on file by the clerk as part of the permanent record of the improvement.

Effective Date: 07-05-1983 .

### **6131.08 Filing applications or remonstrances.**

Owners who have not joined in the petition authorized by section [6131.04](#) of the Revised Code and who are in favor of the improvement may file applications requesting that the improvement be granted and state their reasons therefor. Owners who are opposed to the improvement may file remonstrances against the granting of the improvement and state their reasons therefor. The applications or remonstrances may be filed with the clerk of the board of county commissioners at any time before a final order is made by the board of county commissioners confirming the assessments and ordering the letting of the contracts for the construction of the improvement or before a final order is made dismissing the petition.

Effective Date: 04-09-1981 .

### **6131.09 Preliminary report by county engineer.**

When notified of the filing of a petition authorized by section [6131.04](#) of the Revised Code, the county engineer shall prepare a preliminary estimate of the cost of the proposed improvement. The engineer shall file at the first hearing, as a guide to the commissioners and the petitioners, a preliminary report including his preliminary estimate of cost, his comment on feasibility of the project, and a statement of his opinion as to whether benefits from the project are likely to exceed the estimated cost. The preliminary report shall list all factors apparent to the engineer, both favorable and unfavorable to the proposed improvement, so that the petitioners may be informed as to what is involved. In addition to reporting on the improvement as petitioned, the engineer may submit alternate proposals to accomplish the prayer of the petition. The county commissioners may require the county engineer to file any additional preliminary reports, of whatever nature, that in the opinion of the board will serve as a guide to the board and the petitioners in deciding whether to proceed with the proposed improvement. The costs incurred by the engineer in making preliminary reports may be paid from the bond of the petitioners if the petition is dismissed at the first hearing, and any amount in excess of the bond shall be paid from county funds. If the engineer's costs are not paid from the petitioners' bond, they shall be paid from county funds.

Effective Date: 04-09-1981 .

### **6131.10 Hearing and view of premises.**

The board of county commissioners and the county engineer shall meet at the designated place near the proposed improvement on the day of the view fixed as provided in section [6131.07](#) of the Revised Code and hear the proof offered at that time by any owner affected by the proposed improvement. The board and the county engineer or his authorized representative shall go over and along the line of the proposed improvement and each branch, lateral, or spur mentioned in the petition or in any application filed therefor. The board shall adjourn the view from day to day, or a longer period, until the view is completed. Upon completing the view, the board shall adjourn the further hearing to the place designated by the board, to the day and hour fixed in the notice given. On the day so fixed for the first hearing on the petition, the board shall take up the further hearing on the petition and on the applications or remonstrances filed. The board shall hear the preliminary report of the county engineer as provided in section [6131.09](#) of the Revised Code and shall hear any evidence offered by any owner for or against the granting of the proposed improvement or for or against the granting of any laterals, branches, spurs, or change of route, course, termini, or manner of construction described in the petition or in any application filed therefor. If any applications for branches, laterals, spurs, or change of route or course are filed after the view, the board shall fix a time to view and shall view them. The first hearing may be adjourned from day to day, or for a longer time that may be reasonable, so that all interested owners may have an opportunity to be heard for or against the proposed improvement.

Effective Date: 04-09-1981 .

### **6131.11 Dismissal of petition - appeal.**

If the board of county commissioners, at the first hearing, finds that a proposed improvement is not necessary, or finds that a proposed improvement will not be conducive to the public welfare, or finds that the estimated cost of a proposed improvement will exceed the benefits to be derived if it is constructed, the board shall dismiss the petition and enter its findings upon its journal. Any owner who is affected by the order of dismissal may appeal to the court of common pleas of the county in which the petition was filed, as provided in sections [6131.12](#) to [6131.64](#) of the Revised Code. If no appeal is filed within twenty-one days, pursuant to section [6131.25](#) of the Revised Code, the petitioner shall pay all the costs incurred in the proceedings and the bond shall be released.

An order issued by the board under this section is effective on the day of the hearing at which the board issued it.

Effective Date: 04-09-1981 .

### **6131.12 Grant of petition.**

If the board of county commissioners finds that a proposed improvement is necessary and that it will be conducive to the public welfare, and if the board is reasonably certain that the cost thereof will be less than the benefits, it may grant the prayer of the petition. When deciding whether to grant the prayer of the petition, the board shall give consideration to the protection of environmentally significant areas when those areas could be

adversely affected by the construction of the proposed improvement and, if necessary, to alternative plans providing for that protection as well as for construction of the proposed improvement. Upon granting the prayer of the petition, the board shall determine the route and termini of the proposed improvement and of the branches, spurs, and laterals thereof and the manner of constructing the same. On any petition for any improvement of a ditch, drain, watercourse, or levee, the board, without request or application, may by its order change either terminus of the proposed improvement or the route thereof if it finds that the change is necessary to accomplish the purposes of the improvement. An order issued by the board under this section granting the prayer of the petition is effective on the day of the hearing at which the board issued it.

Upon granting the petition, the board shall order the county auditor to transfer from the general revenue funds of the county, not otherwise appropriated, to the general drainage improvement fund an amount not more than twenty-five per cent of the engineer's preliminary estimate after the twenty-one day period for appeal, as provided in section [6131.25](#) of the Revised Code, has expired and no appeal has been taken, and as soon as the transfer of funds has been authorized, the board shall order the county engineer to prepare the reports, plans, and schedules as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code. It shall fix a date for the filing of the reports, plans, and schedules by the engineer, allowing such time as is necessary for the preparation of the reports, plans, and schedules by the engineer, and such time may be extended from time to time by the board.

The board shall adjourn the hearing on the improvement to the date that it has fixed for the filing of the reports, plans, and schedules by the engineer and adjourn the proceedings from time to time, if necessary, thereafter. No change in the route or termini of any proposed improvement shall be made, no branches, laterals, or spurs shall be granted, and no change shall be made in the nature of the work proposed after the first hearing is completed, except upon application of an interested owner affected by the proposed improvement and upon notice given to all owners affected by the change, as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code. All the findings and orders of the board shall be entered in its journal.

The route of an improvement shall so far as practicable be located so as to avoid running the improvement diagonally across property and shall where practicable follow property lines, section lines, and lines of public highways, but where the line of a public highway is followed, approval must be obtained from the agency owning the highway.

If the board finds for the improvement, and if the improvement is being undertaken through the joint efforts and cooperation of the board and any federal or state agency, and if the federal regulations, state agency rules, or other procedures of the cooperating agency are in conflict with Chapter 6131. of the Revised Code with respect to the procedures for the preparing of contracts, the issuing of bids, the making of awards, and generally the administering of the contracts, the board may adopt the federal regulations, state agency rules, or procedures in those areas where conflict exists and proceed with the improvement in accordance with the requirements of the federal regulations, state agency rules, or procedures.

Effective Date: 04-09-1981 .

### **6131.13 Consolidation of petitions.**

The board of county commissioners may hear and determine at the same time and under one petition, upon proper averments, the following questions:

- (A) The locating of a new ditch, drain, or watercourse, or one partly old and partly new, or one partly open and partly tiled;
- (B) The deepening, widening, straightening, boxing, tiling, or changing of the route or course of, or the altering in any manner of, an old ditch, drain, or watercourse;
- (C) The connecting into a single system of two or more improvements.

The board, on application of owners interested or at its own discretion, may consolidate and treat as a petition for one improvement petitions pending at the same time for two or more separate improvements which connect with each other, or which serve common territory, or which can readily be combined into one system. In case of such



consolidation, the board shall enter its action upon its journal, and, if necessary, it shall order the county engineer to re-estimate and make such further reports and schedules as are necessary upon its order consolidating the improvements. If two or more improvements are consolidated, the proceedings after the consolidation shall be the same as if all the matters were petitioned for in one petition.

Effective Date: 10-01-1953 .

#### **6131.14 County engineer's duties.**

The clerk of the board of county commissioners shall certify to the county engineer immediately, after the requirements of section [6131.12](#) of the Revised Code have been met, a copy of the findings and orders of the board of county commissioners in favor of an improvement. The engineer shall make the necessary survey for the proposed improvement. The engineer shall make plans for structures, maps showing the location of the land proposed to be assessed, and profiles showing the cuttings and gradient of the improvement and shall make an estimate of the cost of the construction of the improvement, which shall include actual construction cost, the cost of engineering, and the cost of notices, publication, and other incidental expenses. The engineer shall recommend the maintenance district in which the improvement shall be placed. The assessment of the improvement for maintenance for one year shall be added to the cost of construction in making the actual assessment and shall be credited to the maintenance fund of the district.

The county engineer shall set proper construction stakes and shall note the intersection of the line of the improvement with the apparent land boundaries of separate owners, township and county lines, natural landmarks, road crossings, or other lines or marks. The engineer shall take and note any necessary levels off the line of the improvement to determine the area of the land subject to drainage.

The engineer shall also establish, at intervals of not less than one in each mile, in the most practicable permanent form, and in locations where destruction or disturbance is improbable, bench marks from which the original levels of the improvement can be established. The bench marks and all levels of the improvement shall be based upon some established elevation of the geological survey of the United States, if any, in the county, and the relation of any assumed elevation used by the engineer in the work upon any improvement to the elevation established by the geological survey shall be accurately stated in the engineer's report. The engineer shall make a plan of the work proposed to be done, which shall show the grade, the depth, the excavating to be done, the location of the permanent bench marks and their actual elevation above or below the base elevation used, and such other data as in the judgment of the engineer will aid in retracing lines, levels, or other features of the improvement. The plan shall indicate the profile and the nature of the excavation.

As soon as the engineer has completed the maps, profiles, and plans for the improvement, the engineer shall transmit copies thereof to the director of natural resources, the director of transportation when a state highway is affected, and the board of directors of any conservancy district within which any part of the lands or streams affected by the proposed improvement may lie. The director of natural resources, the director of transportation, and the directors of the conservancy district shall review the plans submitted and within thirty days file with the county engineer a report indicating approval or, in case that approval cannot be given, a report with recommendations.

The approval or report with recommendations, which, where appropriate, shall include recommendations regarding the use of best management practices that are consistent with the prayer of the petition, shall be transmitted by the engineer to the board of county commissioners, who shall take notice of the approval or recommendations and shall authorize the engineer to make any changes or alterations that in the judgment of the board are necessary or desirable.

Upon receipt of approval of the plans by the director of natural resources, the director of transportation, and the directors of any conservancy districts affected, or upon completion of any changes authorized by the board of county commissioners, the engineer shall file with the clerk of the board of county commissioners all maps, profiles, and plans as provided by this section.

The engineer shall prepare specifications for the construction of the improvement. The engineer shall specify a width of temporary easement for construction purposes. The specifications shall provide for spreading and

leveling of spoil banks and shall provide for erosion and sediment control through the establishment of a sod or seeded strip not fewer than four feet nor more than fifteen feet wide, measured at right angles to the top of the ditch bank, on both sides of the ditch, except where suitable vegetative cover exists. The strip or other such controls shall be considered a part of the permanent improvement. Sod or seeded strips established and maintained in excess of four feet shall be compensated for by their removal from the taxable valuation of the property of which they are a part. The engineer shall make estimates of the cost of excavating and of the cost of material and may divide the construction of the improvement into construction areas as considered expedient. The engineer shall make a note of all fences, floodgates, culverts, or bridges that will be removed in constructing the improvement and of all culverts or bridges that must be adjusted or the channel of which must be enlarged to construct the improvement.

In estimating the cost of an improvement, the engineer may include the cost of installing gates in fences on the reserved right-of-way where needed to provide access for maintenance. The gates shall be kept locked when requested by the owner and shall be considered a part of the original improvement and subject to maintenance as provided by sections [6137.01](#) to [6137.12](#) of the Revised Code. The engineer shall make an estimate of the cost of inspecting the work as it progresses and shall, with the assistance of the prosecuting attorney, prepare forms for contracts with bidders and forms of bid guaranties that meet the requirements of section [153.54](#) of the Revised Code. Upon the acceptance of the contract work, the engineer shall file with the county recorder a property plat showing the general location of the improvement and a statement describing the width of permanent easement for maintenance as provided for in section [6137.12](#) of the Revised Code. The engineer shall make an itemized bill of the costs and expenses incurred in the proper discharge of duties set forth in this section and shall file the maps, profiles, plans, schedules, and reports with the clerk of the board of county commissioners upon completing them.

Effective Date: 10-20-1999 .

#### **6131.15 Schedule of assessments and damages.**

The county engineer shall estimate the benefits accruing to public corporations and any department, office, or institution of the state. The engineer shall determine the estimated cost of the improvement that each public corporation and any department, office, or institution of the state shall be assessed by reason of the benefit to public health, safety, convenience, the environment, wildlife, recreation, and welfare, or as the means of improving any street, road, or highway under the control or ownership of any public corporation or any department, office, or institution of the state, or for benefit to any land owned by any public corporation or any department, office, or institution of the state. The engineer shall prepare a schedule of assessments containing the name and address of each public corporation and each department, office, or institution of the state so benefited, the amount of the estimated assessment, and an explanation of the assessment if the assessment is for purposes other than drainage.

The county engineer shall also include in the schedule of assessments the name and address of each private owner of land and a description of the land believed to be benefited by the proposed improvement, which names and descriptions shall be taken from the tax duplicates of the county. The engineer shall enter in the schedule the amount of the estimated assessment, which in no case shall be less than ten dollars, to be assessed to each tract of land and an explanation of the assessment, if the assessment is for purposes other than drainage, by reason of the construction of the improvement upon which the assessment is based. The total of these estimated assessments including the total estimated assessments allocated to public corporations and the state shall equal the estimated cost of the proposed improvement.

In determining the estimated drainage assessments for a parcel, the county engineer shall give primary consideration to the potential increase in productivity that the parcel may experience as a result of the improvement and shall also give consideration to the quantity of drainage contributed, the relative location of the property to the project, the portion of the project through which the drainage from the parcel flows, the value of the project to the watershed, and benefits as defined in section [6131.01](#) of the Revised Code.

The county engineer shall also estimate the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement and the



subsequent maintenance of the improvement. The engineer shall prepare a schedule of damages containing the name and address of each owner alleged to be damaged, the amount of the estimated damages, and an explanation of the injury upon which the estimate is based. The engineer's schedule of damages shall also contain the value of the land or other property necessary to be taken, the name and address of the owner, and a complete description of the land or other property. The engineer shall include the total of the estimated damages and valuations as part of his estimate of the total cost of constructing the improvement.

The county engineer, in making his estimate of the amount to be assessed each tract of land, each public corporation, and the state in accordance with this section, and the board of county commissioners, in amending, correcting, confirming, and approving the assessments in accordance with section [6131.22](#) of the Revised Code, shall levy the assessments according to benefits. Each tract of land and public corporation affected by an improvement and the state shall be assessed in the proportion that each is benefited by the improvement, as "benefit" and "improvement" are defined in section [6131.01](#) of the Revised Code, and not otherwise.

Effective Date: 04-09-1981 .

### **6131.16 Notice of filing schedule of assessments and damages.**

Upon the filing with the clerk of the board of county commissioners of the reports, plans, and schedules by the county engineer as provided in section [6131.14](#) of the Revised Code, the board of county commissioners shall fix a date not fewer than twenty-five nor more than ninety days thereafter when a final hearing on the report shall be held. Upon the fixing of the date, the clerk shall immediately give notice by certified mail, return receipt requested, or by first-class mail in a five-day return envelope. For each improvement, all individual notices shall be sent by the same type of mail. Whichever method the board chooses, the words "Legal Notice" shall be printed in plain view on the face of the envelope. Notice shall be sent to all the owners whose names appear in the engineer's schedules of assessments and damages. The notice shall be mailed to each address as given in the petition or to such address as the clerk learns to be the correct address, as provided in section [6131.07](#) of the Revised Code. If the schedule of assessments or the schedule of damages filed by the engineer contains the names of owners other than those mentioned in the petition, notices shall also be mailed to those owners. The clerk shall cause to be published a legal notice in at least one newspaper of general circulation in the area affected by the improvement, stating the name and number, if any, of the proposed improvement, the location and nature of the work proposed in the petition, and the date, time, and location of the final hearing. The publication of this notice shall be made in one issue of the newspaper if the individual notices are sent by certified mail. If the individual notices are sent by first-class mail in five-day return envelopes, the publication of this newspaper notice shall be made in two issues of the newspaper, and the notice shall include a list of the names of all addressees whose individual notices were undelivered. The publication shall be not fewer than thirteen days prior to the date of the final hearing. The publication shall serve as public notice to all owners of the substance of the proposed improvement and of the pendency of the final hearing of the board of county commissioners in the proceedings to authorize the construction of the proposed improvement whether or not they were individually named and notified.

The mailed legal notice shall notify the owners of the assessment or the estimated damages, if any, and of compensation for any land or other property necessary to be taken on each tract of land owned by the owner, as estimated and described in the schedules, shall notify the owners of the date of the final hearing by the board on the report of the engineer and on the proceedings for the improvement, and shall notify all owners that all claims for compensation or damages must be filed with the clerk of the board of county commissioners before that date fixed for the final hearing. The notice shall further state that if bonds or notes are to be issued, the owner must give written notice within twenty-one days after the final hearing of his intention to pay in cash. The clerk shall include with the legal notice to the owner a form prescribed by the board of county commissioners that the owner shall use to notify the board of his intention to pay in cash. If he does not give notice of his intention to pay in cash within twenty-one days, the installments will be payable with the interest added at the same rate that the bonds or notes bear interest.

Proof of notice by publication shall be verified by affidavit of the printer or other person knowing that fact, and the clerk of the board of county commissioners shall prepare a certificate showing the service of the notices by mail, both of which shall be filed with the clerk of the board of county commissioners on or before the day of the

final hearing. Notices returned undelivered and receipts shall be kept on file as a permanent record of the improvement.

Effective Date: 07-05-1983 .

### **6131.17 Exceptions to engineer's schedules of assessments and damages.**

Any owner may accept the estimated assessment as described in the engineer's schedules or may accept the estimated damages or compensation as described in the engineer's schedule of damages, or may acquiesce to the engineer's failure to estimate damages or award compensation in his favor, and will be construed to have done so unless he files exception to the schedules or files claim for damages or compensation on or before the date of the final hearing in the proceedings to construct the improvement.

All exceptions to the engineer's schedules of assessments and damages, and all claims for compensation for land or other property necessary to be taken, and all claims for damages by reason of a proposed improvement not listed in the engineer's schedule of damages, shall be filed with the clerk of the board of county commissioners as provided in section [6131.16](#) of the Revised Code on or before the date of the final hearing in the proceedings to construct the improvement. All exceptions to the engineer's schedules and all claims for compensation or damage shall describe the land, a part of which is claimed to be taken or damaged, and shall describe the nature of and the reasons for the claim asked to be paid to each claimant.

Effective Date: 04-09-1981 .

### **6131.18 Prosecuting attorney to represent county.**

In all claims for compensation or damages, and in all matters where the rights of the county are affected, the prosecuting attorney shall represent the county, and as such representative, he may appeal to the court of common pleas from any order allowing compensation or damage if in his opinion it is excessive, and may appeal from any order levying an assessment against the county for special benefits to the highways or to land owned by the county if in his opinion the assessment is excessive. On appeal by any owner the prosecuting attorney shall represent the county insofar as the county may be affected by the appeal.

In all matters where the rights of the state of Ohio are affected the attorney general shall represent the state. He shall appeal to the court of common pleas any order refusing compensation or damages, or from any order which in his opinion is inadequate, and he shall appeal from any order levying an assessment against the state which in his opinion is excessive.

Effective Date: 08-23-1957 .

### **6131.19 Hearing on compensation.**

At the final hearing, or at such time to which said hearing is adjourned to hear claims for compensation or damages, the board of county commissioners shall hear any competent evidence offered by any of the interested owners upon the engineer's estimate of damages and upon any claim filed for compensation or damages. Upon consideration of all the evidence, including the county engineer's schedule of estimated damages, and a view of the premises, if it desires such view, the board shall find and determine the amount of damages to which any owner is entitled, and shall also determine the fair value of any land or any other property to be taken for said improvement. The board shall enter its findings in its journal, and shall authorize the county auditor to issue his warrants upon the county treasurer of the county in which the land is located, payable from the general drainage improvement fund, to such claimants for such amounts, which amounts so determined shall be paid before any work on the proposed improvement is done. An appeal may be taken by any claimant from the order of the board refusing the allowance of compensation or damages, and an appeal may be taken by any claimant from an order allowing compensation or damages if, in his opinion, the amount awarded is less than the actual damages sustained, or less than the fair value of the land or other property necessary to be taken. Such appeal shall be taken and perfected as provided in sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code.

Effective Date: 08-23-1957 .

## **6131.20 Final hearing.**

At the final hearing on a proposed improvement, the board of county commissioners shall hear any application that is filed for a change of the route or course of the proposed improvement, or of either terminus thereof, from that shown in the report of the county engineer. The board may hear any application to make any change in the nature, kind, or extent of the work proposed to be done, as shown in the report of the engineer. If the board finds that such changes will better accomplish the purpose and object of the proposed improvement, it may make such change. If a change is made in the plan, or if the damages and compensation allowed by the board exceeds the estimate of damages filed by the engineer, thereby increasing the cost of the improvement, the final hearing shall be continued until the engineer makes proper schedules, which will include such changes. Before proceeding to make such change, all owners who will be affected thereby shall be notified of such proposed change, in the manner provided in sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code.

Effective Date: 08-23-1957 .

## **6131.21 Factors to be considered by commissioners at final hearing.**

At the final hearing on a proposed improvement, after hearing all the evidence offered in the proceedings and after receiving and considering all the schedules, plans, and reports filed by the county engineer, the board of county commissioners shall review and reconsider the former order made by it finding in favor of the improvement and shall either affirm its former order and proceed to confirm the assessments and order the letting of the contract or shall set aside its former order and dismiss the petition. At the final hearing, if the board finds that the cost of the improvement will be equal to or greater than the benefits that will be derived therefrom if constructed, or if the board finds that the improvement is not necessary, or if it finds that the improvement will not be conducive to the public welfare, the board shall set aside the former order finding in favor of the improvement made by it at the first hearing and shall dismiss the petition. In determining whether or not the improvement should be granted, the board shall consider the following factors:

- (A) The cost of location and construction;
- (B) The compensation for land or other property necessary to be taken;
- (C) The effect on land along or in the vicinity of the route of the improvement;
- (D) The effect on land below the lower terminus of the improvement that may be caused by constructing the improvement;
- (E) The sufficiency or insufficiency of the outlet;
- (F) The benefits to the public welfare;
- (G) The benefits to land, public corporations, and the state needing the improvement;
- (H) Any other proper matter that will assist it in finding for or against the improvement.

If the petition is dismissed at the final hearing, all costs for the proceedings, including the costs incurred by the engineer in making surveys, plans, reports, and schedules, may be distributed to the benefiting landowners in the same ratio as determined by the engineer in the final estimated assessments presented at the final hearing. The board shall confirm or alter the assessments as provided for in section [6131.22](#) of the Revised Code. The approved assessments shall then be certified to the county auditor to be administered pursuant to section [6131.49](#) of the Revised Code.

If the costs are not distributed to the benefiting landowners, they shall be paid from county funds.

The petitioner, or any owner in favor of the improvement, may appeal from the order of dismissal, as provided in section [6131.25](#) of the Revised Code.

An order issued by the board under this section is effective on the day of the hearing at which the board issued it.

Effective Date: 04-09-1981 .

### **6131.22 Approval and confirmation of assessments.**

At the final hearing on a proposed improvement, if the petition is not dismissed, the board of county commissioners shall hear any evidence offered for or against the assessment proposed to be levied against any owner or on any land as shown by the schedule of assessments filed by the county engineer and shall hear any competent evidence on the question of benefits. The board, from the evidence offered and from an actual view of the premises, shall amend and correct the assessments, and the assessments so amended or corrected shall be approved by the board. That part of the assessment that is assessed for benefits to the general public because the improvement is conducive to the public welfare shall be paid by the public and shall be assessed against the county payable from the general fund. Such part of the assessment as is found to benefit state roads or highways shall be assessed against the state payable from motor vehicle revenues. Such part of the assessment as is found to benefit county roads or highways shall be assessed against the county payable from motor vehicle revenues. Such part of the assessment as is found to benefit any public corporation or political subdivision of the state shall be assessed against the public corporation or political subdivision and shall be paid out of the general funds or motor vehicle revenues of the public corporation or political subdivision of the state, except as otherwise provided by law. The board shall approve and confirm the assessments, shall order the engineer to receive bids for the construction of the proposed improvement, and shall fix the date, time, and place for the receiving of bids, which shall be not less than twenty-five days after the date of the order. The board shall determine when the assessments shall be paid and shall determine whether bonds or notes shall be issued in anticipation of and payable out of the installments of assessments. The board's orders approving the assessments and ordering the engineer to receive bids, and other orders made at this hearing, shall be entered on its journal. The clerk of the board of county commissioners shall immediately transmit to the county auditor the schedules listing all assessments as approved by the board.

Any owner opposed to the granting of the petition, or any owner opposed to further proceedings in the improvement, or any owner who claims that the assessment levied against him is excessive or is not in proportion to benefits, may appeal from any order made pursuant to this section, as provided in section [6131.25](#) of the Revised Code.

An order issued by the board under this section is effective on the day of the hearing at which the board issued it.

Effective Date: 04-09-1981 .

### **6131.23 Semiannual installments for payment of assessments.**

The assessments estimated in accordance with section [6131.14](#) of the Revised Code shall be payable in not less than two semiannual installments. At the time of the final hearing, in the order approving the levying of the assessments, the board of county commissioners shall determine how long a period of time, in semiannual installments, as taxes are paid, shall be given the owners of land benefited to pay the assessments that are made for an improvement and whether or not bonds or notes shall be issued and sold in anticipation of such payments. If bonds or notes are to be issued, the interest shall be added to the assessments. If the estimated cost of the improvement does not exceed five hundred dollars, not more than two semiannual installments, as taxes are paid, shall be given to owners of lands benefited to pay the assessments that are made for the improvement. If the estimated cost of the improvement exceeds five hundred dollars, the board may determine the number of installments in which the assessments are to be paid. 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 due.

When assessments are payable in installments and county general funds are used to pay for the improvement, the assessment shall not exceed thirty semiannual installments, as computed by the county auditor pursuant to section [6131.49](#) of the Revised Code, and shall be payable upon completion of the contract.

When assessments are made payable in installments and bonds or notes have been sold to pay for the improvement, interest shall be added to the installments of assessments at the same rate as is drawn by the

bonds or notes issued to pay for the improvements. Any owner may pay the estimated assessments on the owner's land in cash within thirty days after the final hearing without paying any interest thereon. If the legislative authority of a political subdivision chooses to pay the assessments on all parcels within the subdivision, both public and private, in one installment, it shall pass a resolution so stating and shall send the resolution, or a copy thereof, to the board of county commissioners before making the payment. The legislative authority shall pay all subsequent maintenance assessments levied under section [6137.03](#) of the Revised Code if it chooses to pay the construction assessments on all parcels within the subdivision.

Bonds may be sold for any repayment period that the board of county commissioners may determine proper, not to exceed thirty semiannual installments, except that for bonds sold by a board of county commissioners for soil and water conservation district improvements pursuant to section 940.33 of the Revised Code, the repayment period shall not exceed thirty semiannual installments.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Effective Date: 04-09-1981; 04-15-2005; 2007 HB119 09-29-2007 .

#### **6131.24 Preliminary steps for receiving bids for ditch improvements.**

The board of county commissioners shall fix a date, time, and place at the final hearing for the county engineer to receive bids. The county engineer shall prepare the necessary bid documents and legal advertisements as provided in sections [307.87](#) and [307.88](#) of the Revised Code.

If an appeal has been taken to the court of common pleas, as provided in section [6131.25](#) of the Revised Code, the bids may be received and tabulated, but the bid guaranties with the bids shall immediately be returned to the bidders, and no further steps shall be taken on the bids.

Effective Date: 04-09-1981 .

#### **6131.25 Appeals.**

Any affected owner may appeal to the court of common pleas within twenty-one days of the date that any order was issued by the board of county commissioners, as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code, and may appeal any one or more of the following questions:

- (A) Is the improvement necessary?
- (B) Will the improvement be conducive to the public welfare?
- (C) Is the cost of the improvement greater than the benefits conferred?
- (D) Is the route, termini, or mode of construction the best to accomplish the purpose of the improvement?
- (E) Are the assessments levied according to benefits?
- (F) Is the award for compensation or damages just?

The appeal may be taken from any order affecting any part of the improvement as well as from any order affecting the entire improvement.

Effective Date: 04-09-1981 .

#### **6131.26 Filing bond and statement of appeal.**

To perfect an appeal as provided in section [6131.25](#) of the Revised Code, the owner of land shall file an appeal bond, with surety to be approved by the clerk of the court of common pleas, to pay all costs on appeal if the decision or order appealed from is sustained on a hearing or trial thereof. The owner shall also file with the bond a statement of the decision or order appealed from and of the claims of the owner in ordinary and concise language. The bond and statement shall be filed by the owner with the clerk of the court of common pleas,

including all necessary filing fees and other related documents as the court may require, within twenty-one days from the date of the order. Two or more owners may join in the same appeal and file the same bond and the same statement.

The amount of the appeal bond shall be not less than five hundred dollars, plus the sum of two dollars for each parcel of land in excess of two hundred parcels averred in the petition to be benefited.

Effective Date: 04-09-1981 .

#### **6131.27 Transcript of order for ditch improvement.**

If an appeal is perfected by filing the bond and statement provided in section [6131.26](#) of the Revised Code, the clerk of the board of county commissioners shall promptly prepare a transcript of the orders made by the board of county commissioners, and shall file such transcript with the clerk of the court of common pleas, together with all the original papers in said proceedings. The clerk of the court of common pleas shall file such transcript and papers in the court of common pleas. The proceedings on appeal in the court of common pleas shall be styled, "In the matter of the appeal in county ditch or improvement No. ...., petitioned for by ....."

Effective Date: 08-23-1957 .

#### **6131.28 Joinder and separation of appeals.**

Several owners may appeal from the orders in the same improvement and file separate bonds and separate statements stating the matters appealed. If several owners appeal, only one transcript need be made by the clerk of the board of county commissioners. All the appeals shall be filed in one action in the court of common pleas, which court, on any appeal, may separate for hearing or trial the issues appealed to said court, and render its order, judgment, or decree upon the issues as the same are determined. The case on appeal shall be advanced, or tried as soon as the court can hear it.

Effective Date: 08-23-1957 .

#### **6131.29 Issue for hearing or trial.**

The issue for a hearing or trial in the court of common pleas shall be made by the original papers filed with the clerk of the board of county commissioners, including the statements of the appellants. No pleadings shall be filed on appeal. The allegations in any petition, or in any application, claim, or statement filed in the proceedings will on appeal be deemed to be denied by those opposing. After an appeal has been perfected by any owner, any other interested owner by motion, oral or in writing, may by order of court be entered on the record as jointly interested with the appellant. In such case such owner shall be bound for costs with the appellant if the decision or order appealed from is sustained.

Effective Date: 08-23-1957 .

#### **6131.30 Appeal procedure in common pleas court.**

The court of common pleas, on appeal, shall hear the matters appealed de novo. The proceedings shall be conducted under the rules of law and procedure for civil cases. An appeal shall bring into the court all the owners who in any way may be interested in or affected by the matter appealed. The court, exercising equitable jurisdiction, shall hear all matters appealed, except an appeal from an order allowing or refusing to allow compensation or damages. The court may view the premises the same as views in other civil cases and shall make such judgment, order, or decree as is warranted by the evidence. Any owner aggrieved by the judgment, order, or decree may appeal for a review of the proceedings, the same as in other civil cases. On appeal, the burden of proof shall be on the owner having the affirmative of the proposition, who shall have the opening and closing. The court, exercising equitable jurisdiction, shall bring the entire proceedings before it in order to determine all the issues raised in the proceedings and enter a final judgment, order, or decree for or against the improvement petitioned for and for or against the assessments to be levied and the compensation and damages to be paid.



If the court orders the county engineer to make a survey and file his reports, plans, and schedules, the court also shall enter an order for transfer from the general revenue funds of the county to the general drainage improvement fund a sum of not more than twenty-five per cent of the engineer's preliminary estimate.

The court of common pleas may appoint a board of arbitrators to assume the duties of the judge. The board shall be comprised of three disinterested persons chosen by the judge, who shall designate one of the persons to be chairman. A decision of the board shall require approval of a majority of the members. Either party may appeal the board's decision to the court of common pleas, which shall decide the case on the record of arbitration.

Effective Date: 03-17-1987 .

### **6131.31 Procedures for findings on appeal.**

(A) If the appeal is from an order of the board of county commissioners made at the first hearing dismissing the petition, and if the court of common pleas from the evidence adduced, including the county engineer's preliminary estimate of cost and preliminary report on feasibility of the project, but without a survey having been made by the county engineer and without any of the schedules, plans, or reports having been filed by the engineer, finds that the construction of the improvement is not necessary or will not be conducive to the public welfare or that the cost will probably exceed the benefits, the court need not order a survey of the improvement, shall find against the improvement, and shall dismiss the petition therefor. The costs before the board shall be paid by the petitioner. The cost in the court shall be paid by the appellant.

(B) If the appeal is from an order of the board made at the first hearing of the board dismissing the petition, and if the court orders the engineer to make a survey and to file his reports, plans, and schedules, and if from the reports, plans, and schedules and from all evidence adduced the court finds that the improvement is not necessary or will not be conducive to the public welfare or that the cost of the improvement will be more than the benefits conferred by the construction of the improvement, then the court shall find against the improvement and shall dismiss the petition therefor, and all costs before the board shall be paid by the petitioner. All costs in the court shall be paid by the appellant except the costs of the engineer in making his survey, reports, plans, and schedules. The costs incurred by the county engineer shall be paid from county funds.

(C) If the appeal is from an order of the board made at the first hearing of the board dismissing the petition, the court sitting as a court of equity before finding for the petition shall order the engineer to make his survey, reports, plans, and schedules as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code and to file the same with the clerk of the court of common pleas. Before the court finds for the improvement, the clerk shall notify all owners as named in the schedules of assessments and damages by mail and by publication, as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code. The notice shall be the same as the notice given when the schedules are filed with the clerk of the board of county commissioners, except that the notice shall state the date and time of the hearing in the court of common pleas, and proof of the notice shall be made by the certificate of the clerk of the court. If from the evidence adduced and the schedules filed the court finds that the improvement is necessary and will be conducive to the public welfare and that the cost of the improvement is less than the benefits that will be derived by the construction of the improvement, the court may find for the improvement and proceed to hear the evidence relating to the assessments, compensations, and damages and shall modify, correct, and confirm the schedules relating thereto. The court shall fix the time for the trial of claims for compensation or damages, and the claims shall be tried by a jury unless trial by jury is waived. The compensation or damages awarded shall be paid as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code. The court shall order the clerk to certify a transcript of the findings and judgments, together with all the original papers filed in the court, to the clerk of the board of county commissioners, who shall enter the court's orders in the board's journal and transmit the schedules to the county auditor. The engineer, the auditor, and the board shall proceed with the letting of the contract, the construction of the improvement, and the collecting of the assessments in the same manner as if the board had approved and confirmed the assessments and ordered the letting of the contract. All costs before the board, the costs of the engineer in making his survey, reports, plans, and schedules, and all costs on appeal shall be a part of the costs of constructing the improvement.

(D) If the appeal is taken to the court from an order of the board dismissing the proceedings at the final hearing, and if the court finds that the construction of the improvement is necessary and will be conducive to the public

welfare and that the cost of the improvement is less than the benefits to be derived by the construction of the improvement, the court may find in favor of the improvement and shall hear the evidence relating to the assessments, compensations, and damages and shall approve, correct, and confirm the schedules relating thereto. Before the court finds for the improvement, the clerk shall notify all owners named in the schedules of assessments and damages by mail and by publication as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code. The notice shall be the same as the notice given when the schedules are filed with the clerk of the board of county commissioners, except that the notice shall state the date and time of hearing in the court of common pleas, and proof of the notice shall be made by certificate of the clerk of the court. The schedules so approved, corrected, and confirmed together with the proceedings in the court shall be certified by the clerk of the court of common pleas to the clerk of the board of county commissioners, who shall enter the court's orders on the board's journal and transmit the schedules to the county auditor. The engineer, the auditor, and the board shall proceed to let the contract for the construction of the improvement and to levy and collect the assessments as if no appeal had been taken, and all the costs before the board and all costs on appeal shall be a part of the costs of the improvement.

(E) If the appeal is taken to the court from an order of the board dismissing the proceedings at the final hearing, and if the court finds that the improvement is not necessary or is not conducive to the public welfare or that the cost of the improvement will be more than the benefits, the court shall dismiss the proceedings. All the costs before the board shall be paid pursuant to section [6131.21](#) of the Revised Code.

(F) If the appeal is from a final order of the board finding in favor of the improvement and approving and confirming the assessments, and if the court finds that the improvement is necessary and will be conducive to the public welfare and that the cost thereof will be less than the benefits, the court shall hear all the matters appealed, shall correct and confirm the assessments according to benefits, and shall certify the findings to the clerk of the board of county commissioners. The costs before the board shall be a part of the costs of the improvement and the court shall adjudge the costs made on the appeal as it considers equitable.

(G) If the appeal is from a final order of the board finding in favor of the improvement and approving and confirming the assessments, and if the court finds that the improvement is not necessary or is not conducive to the public welfare or that the benefits conferred are less than the costs, the court shall find against the proceedings, and the petition shall be dismissed. All costs before the board shall be paid pursuant to section [6131.21](#) of the Revised Code. The court shall adjudge the costs made on the appeal as it considers equitable.

(H) If the appeal is on questions of manner of construction, route, or termini or for or against branches, laterals, or spurs, on questions of assessments, or on questions that do not require a finding for or against the petition, the court shall adjudge the costs as it considers equitable.

Effective Date: 04-09-1981 .

### **[6131.32 Right of trial by jury.](#)**

On appeal from an order made by the board of county commissioners allowing or refusing to allow compensation or damages, the owners interested shall have the right of trial by jury. The issues shall be made by the application or claim filed with the clerk of the board of county commissioners for compensation or damages, and the statements in such applications shall be deemed denied. The claimant for compensation or damages shall have the affirmative and shall have the opening and closing of the trial. The case shall proceed pursuant to the law and the rules governing civil procedure, with the same rights for motions for new trial and the right of appeal as in other civil cases. The jury may view the premises, as in other civil cases. Just compensation or damages shall be awarded, as provided in the Ohio constitution.

Effective Date: 08-23-1957 .

### **[6131.33 Jury verdict form.](#)**

The jury authorized by section [6131.32](#) of the Revised Code, upon submission of the case to it under proper charge of the court of common pleas, and upon a form of verdict provided by the court, shall return its verdict determining the matter in issue, upon which verdict a judgment shall be entered by the court as in other civil

cases. The verdict shall be signed by the jury. Nine or more of the jurors must concur in a verdict. If there is more than one appellant with separate claims on the question of allowance or compensation or damages, or the refusal to allow compensation or damages, or if there are issues as to different properties, the court may submit all the several claims and issues to the same jury, with appropriate verdicts as to each claim, or it may direct separate trials for the separate claims and issues, or any one or more of them. In said proceedings the jury shall be instructed that in its verdict for compensation for land taken or for damages to any land by an improvement it shall not consider or deduct the value of any benefits that such land will receive from the construction of such improvement.

Effective Date: 10-01-1953 .

#### **6131.34 Costs and fees.**

The court of common pleas shall receive the verdict referred to in section [6131.33](#) of the Revised Code, and if no motion for new trial thereof is filed within three days, which motion may be filed as in other civil cases and for like causes, or if such motion for a new trial is overruled, it shall render judgment according to said verdict, and for or against the owners, separately, if there is more than one. The court shall tax the costs of appeal, including jury fees, in favor of the prevailing party, and where two or more appeals are tried together the court shall divide the costs as is equitable. If the appellants, on claims for compensation or damages, do not recover a judgment for more than the amount of compensation or damages awarded by the board of county commissioners, the costs on the hearing as to compensation or damages on appeal shall be taxed against the appellants. If the amount recovered is greater than the amount awarded by the board, the costs shall be taxed against the county.

The prosecuting attorney shall represent the county in all appeals on questions of compensation or damages. On appeals of other matters which are tried to the court sitting as a court of equity, the court shall adjudge the costs as it deems just and equitable except as otherwise provided in sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code.

Effective Date: 09-16-1957 .

#### **6131.35 Period for perfecting appeals.**

The twenty-one day period for perfecting appeals provided in section [6131.25](#) of the Revised Code begins to run from the time of the entering of any judgment, order, or decree against any of the appellants upon any of the issues that are brought to the court of common pleas on appeal. If two or more owners desire to review the proceedings of the court of common pleas by appeal on questions of law in the court of appeals, they may join in the notice of appeal, or they may file separate notices of appeal. If more than one appeal is filed in the court of appeals seeking to review the judgment, order, or decree entered by the court of common pleas in the proceedings on appeal, the court of appeals may consolidate the actions and shall hear them at the same time in order that all issues raised in the improvement proceedings may be presented at the same time.

Effective Date: 03-17-1987 .

#### **6131.36 Certification of transcript of common pleas proceedings to county commissioners.**

After the final judgment, order, or decree upon any appeal is rendered by the court of common pleas, the clerk of the court of common pleas shall, within twenty-one days, make a transcript of the same and shall certify and transmit it with all original papers in the case to the clerk of the board of county commissioners, who shall forthwith enter the judgment, order, or decree upon the journal of the board. If the judgment, order, or decree is in favor of the granting of the improvement, the board shall proceed with the improvement proceedings in compliance with the final judgment, order, or decree from the point at which they were terminated by the appeal or from the point at which the court orders the board to proceed.

Upon the expiration of the twenty-one day appeal period provided in section [6131.25](#) of the Revised Code, the clerk of the board of county commissioners shall transmit the schedules of assessments and damages to the county auditor. The board of county commissioners and the county engineer shall proceed with letting contracts and constructing the improvement, and the county auditor shall proceed to levy and collect assessments and to

pay compensation and damages as if no appeal had been taken. If an appeal is perfected to the court of appeals and a supersedeas bond is given, the board and the engineer shall stay their proceedings until the final determination of the proceedings in the court of appeals or in the supreme court.

Effective Date: 04-09-1981 .

### **6131.37 Bids for ditch improvements.**

If no appeal has been taken to the court of common pleas at the time fixed in the notice to receive bids as provided by section [6131.24](#) of the Revised Code, or if an appeal has been taken at the time as stated in the notice given after the appeal has been determined, the county engineer shall receive bids. The contracts, bids, bonds, and bid guaranties shall be handled in accordance with sections [153.12](#) to [153.14](#) and [307.86](#) to [307.92](#) of the Revised Code. Any action of the board forfeiting the bidder's deposit or bid guaranty shall be entered on its journal, and the forfeited sum shall be paid into the general drainage improvement fund.

Effective Date: 04-09-1981 .

### **6131.38 Bid requirements.**

The county engineer shall prepare the documents as specified in section [6131.24](#) of the Revised Code. If the improvement requires both labor and material that is used in and remains a part of the improvement, the bids referred to in section [6131.37](#) of the Revised Code shall state separately the bidder's offer upon each and for each bid item indicated on the form. If the plans or specifications do not name a specific grade, quality, kind, or size of any material of which different standard grades, qualities, kinds, or sizes are used, then the bids shall specify the grade, quality, kind, or size proposed to be furnished. Unless the specifications otherwise provide, all bids for material shall be considered to be for delivery at the location of the improvement and at such place as is designated by the engineer in charge of the work, except that tile or pipe of any kind shall be along the line of the improvement where the same are to be used, provided the location is accessible. Any bidder may submit a bid for any portion of the improvement that is the subject of a special estimate, whether of construction or material, providing it is for work or material that can be done or furnished independently of other work or material.

The bid form shall indicate the time that the contract shall be completed or be left blank for the bidder to establish such a time.

Effective Date: 04-09-1981 .

### **6131.39 [Repealed].**

Effective Date: 12-09-1967 .

### **6131.40 Acceptance of bids.**

When the time has passed for the receiving of bids referred to in section [6131.37](#) of the Revised Code, the county engineer shall, as soon as is practicable, open, read aloud, and tabulate the bids and report them to the board of county commissioners with his recommendation of which bid, or combination of bids, in all respects is the best. No bid shall be accepted after the time designated for receiving bids. The board may accept any combination of bids of different bidders for different parts of the work or for furnishing different materials that they find will be more economical or advantageous than the aggregate bid of a single bidder, but no bid shall be accepted for any part or thing that exceeds the estimate of the engineer unless only by such acceptance can a contract for the completion of an entire improvement be let for less than the aggregate estimate of the total improvement.

If it is found that all bids for work and material, or all bids for any separate part of work and material, are in excess of the estimates reported by the engineer, the board shall order the readvertisement of the same, or any part thereof, for which the bids are in excess, and they may direct the engineer to re-estimate the same for bids on the new estimate.

Effective Date: 04-09-1981 .

#### **6131.41 Contracts for ditch improvement.**

The acceptance of the bids in accordance with section [6131.40](#) of the Revised Code shall be approved by the board of county commissioners. Upon the acceptance of any bid for the whole or any part of an improvement, the bidder shall within ten days enter into a contract in writing to perform the work or furnish the material bid for as prepared by the county engineer. The board by an order entered on its journal shall record the time within which the work shall be completed and material furnished, but if an improvement requires both labor and material and contracts therefor are given to different persons, the time of furnishing the material and completing the labor shall correspond with the time provided for its use in the progress of the work. An upper contractor shall not be required to complete his contract until an outlet is furnished by the work done by a lower contractor.

Effective Date: 04-09-1981 .

#### **6131.42 Actions against contractor and bondsmen.**

Any owner who has suffered any loss or damage by reason of the failure of the contractor to perform his contract, or by his negligence in performing the contract, may bring suit against the contractor and his bondsmen to recover the damages so sustained. Two or more owners who are assessed for the construction of the improvement may in one suit bring an action against the contractor and his bondsmen to recover the damages which may be sustained by all the plaintiffs by reason of the failure of the contractor to construct the improvement according to the contract.

When two or more owners join in one suit in an action for damage against the contractor, the jury in one verdict shall find the damages suffered by all the plaintiffs. The court shall enter judgment on the verdict in favor of the plaintiffs for the amount of damages, as found by the jury, and shall at the time of entering the judgment find what part of said judgment should be paid to each of the plaintiffs respectively, and shall order the clerk to [of] the court to pay to each of said plaintiffs the part of said judgment as found by the court when said judgment is paid. Any owner who is assessed for the construction of any improvement may bring an action to enjoin the payment of any money owed a contractor who has not constructed the work according to the contract and specifications until the contractor has constructed the improvement according to the contract and specifications. The remedies provided in this section are in addition to all other remedies provided by law.

Effective Date: 08-01-1980 .

#### **6131.43 Assessments for ditch improvements.**

Upon the completion of the work and the approval of it by the county engineer, the board of county commissioners shall order the county auditor to reduce pro rata the assessments confirmed by it by the difference between the estimated cost of the construction and the final cost as certified by the county engineer. The assessments so reduced, including the cost of location, engineering, compensation, damages, and contingency and the assessment for maintenance for one year, shall be levied upon each parcel of land, each public corporation, and each department, office, or institution of the state as stated in the schedules as of the date of the order of the board approving the contracts and ordering the levying of the assessments. The auditor shall notify the owners of all assessed lands of the amount of the actual assessment, which shall be not less than ten dollars, and of the payment plan for the collection of the assessments. The auditor shall immediately place the assessments so levied upon the duplicates of the county, and the assessments shall be a lien upon the several parcels of land respectively from and after the date of the order of the board approving and levying the assessments. The auditor shall be liable on his bond for any damages sustained by any person by reason of the auditor's failure to place promptly the assessments upon the proper duplicates of the county.

The county auditor shall transmit to the governing body of any public corporation affected by an improvement the assessments levied against it. The governing body shall authorize payment to be made to the county treasurer of the county in which the improvement is located from the general fund of the public corporation, except as otherwise provided by law.

The county auditor shall also transmit to the director of any department, office, or institution of the state, affected by an improvement the assessments levied against any department, office, or institution of the state. Payment

shall be made to the county treasurer of the county in which the improvement is located from the drainage assessment fund in the manner provided by section [6133.15](#) of the Revised Code. In presenting their proposed expenses to the director of budget and management pursuant to section [126.02](#) of the Revised Code, the directors of all departments, offices, or institutions of the state shall list all unpaid assessments received before the first day of October of the year preceding the first regular session of the general assembly for the state's proportionate share of the cost of any improvement authorized or constructed under sections [6131.01](#) to [6131.64](#), [6133.10](#) to [6133.15](#), and [6135.01](#) to [6135.27](#) of the Revised Code and all unpaid assessments for maintenance as provided by sections [6137.01](#) to [6137.14](#) of the Revised Code. The assessments so listed shall be included in the state budget estimates of revenues and expenditures for each state fund and budget estimates for each state agency prepared and submitted to the governor under section [126.02](#) of the Revised Code.

Effective Date: 07-01-1985 .

#### **6131.44 Contractor failing to complete contract.**

If a contractor is not performing or completing the work according to the contract or within the time stated in the contract or an extension thereof, the board of county commissioners shall give the contractor and his sureties notice in writing of a hearing on such matters, which notice shall be given personally or by registered mail at least ten days before the date fixed for the hearing.

If the board at the hearing finds, by an order entered on its journal, that the contractor is improperly performing his work, has abandoned the work, or fails or refuses to complete the contract entered into under sections [6131.01](#) to [6131.64](#) of the Revised Code within the time mentioned in the contract or within a time as stated in an extension of time granted, the board may notify the contractor in writing of the finding and shall immediately give written notice of the finding to the sureties on any bond of the contractor. If within ten days after the receipt of the notice, the sureties or any one or more of them notify the board in writing of their intention to enter upon and complete the work covered by the contract, the sureties shall be permitted to do so. The board shall allow them twenty days after the receipt of the notice in writing within which to enter upon the work and resume the construction thereof unless the time is extended by the board for good cause shown by an order of the extension entered on its journal.

If, after receiving notice of the finding of the board, the sureties on the contractor's bond do not within ten days give the board written notice, as provided in this section, or if the sureties who enter upon the work do not carry the same forward with reasonable progress, or if they improperly perform the work or abandon or fail or refuse to complete the work covered by the contract, the board shall order the county engineer to complete the same in the manner provided in this section.

The engineer shall first advertise the work to be done, or material to be furnished, for letting in the manner provided in sections [6131.01](#) to [6131.64](#) of the Revised Code, and the estimated cost at which the work is advertised shall be the difference between the original contract price thereof and the amount theretofore paid to the original contractor. At the letting[,] the contract for the completion of the work shall not be let at a price in excess of the estimate. If no bids to complete the work for an amount not exceeding the estimate are received, the board shall cause that portion of the work still uncompleted to be re-estimated by the engineer, and the engineer shall readvertise the same at the amended estimate in the manner provided in such sections and relet the work for not more than the estimate. In reletting an uncompleted contract, the contract shall be awarded by the board to the lowest and best bidder. Before entering into a contract for the completion of any such improvement, the board shall require the contractor to give a bond as provided in section [153.54](#) of the Revised Code. If the cost of completing the work exceeds the amount set aside or apportioned therefor, the remainder of the cost shall be paid in the first instance from the general ditch improvement fund. If the cost of completing any such improvement exceeds the portion of the contract price remaining unpaid to the contractor at the time of his default, the excess shall be computed by the board after the completion of the work, and the board shall certify those facts to the prosecuting attorney who shall proceed to collect the excess from the contractor and the sureties upon any bond of the contractor, and the amount so collected shall be paid into the county treasury to the credit of the fund from which the excess was originally paid.



If the estimated cost of completing a defaulted contract does not exceed four thousand dollars, the board may order the engineer to complete the same by force account or by a contract let without advertisement if in the judgment of the board a saving can be effected thereby.

Effective Date: 04-09-1981 .

#### **6131.45 Extending the contract time.**

The time fixed in a contract for the performance of any work or the furnishing of any material, on good cause shown by affidavit, may be extended by the board of county commissioners with the approval of the county engineer for any definite period that it finds is reasonably necessary to complete the work or furnish the material under the contract. In case of such extensions the contractor's bond and any sureties thereon shall remain liable as if the extended time had been originally named in the bond or contract. The board shall not extend the contract time of furnishing any material to be used by a contractor unless by consent of the contractor the time for performance of his contract is correspondingly extended. Any order extending or refusing to extend the contract time shall be by resolution entered on the journal of the board. The affidavit shall be filed in the proceedings.

Upon the recommendations of the county engineer, the board of county commissioners may deduct the costs of engineering and inspection incurred by the county during the tenure of the authorized extensions of time as liquidated damages from any money due or to become due the contractor or his bondsmen unless the extension of time is due to an unforeseeable cause beyond the control and without the fault or negligence of the contractor.

Effective Date: 04-09-1981 .

#### **6131.46 Supervision and inspection of county engineer or deputy.**

All work on an improvement and all material furnished for use therein shall be under the supervision and inspection of the county engineer or a deputy appointed by him for the purpose. All material furnished under the specifications and contract shall be inspected by him before use and within a reasonable time after the same is delivered and placed upon the line of the improvement or such other place as is designated.

Effective Date: 04-09-1981 .

#### **6131.47 Notice to remove or alter obstruction.**

During the execution of the work on an improvement, the county engineer shall cause notice to be given to the owner within seven days in advance of removal or alteration of a culvert, bridge, fence, or floodgate, where the removal or alteration is necessary to the progress of the work of the improvement, to remove or make such alteration as the engineer finds necessary.

During the formulation of the plans, the county engineer shall evaluate all culverts and bridges, except those on state and federal highways, for adequacy of capacity, vertical and horizontal alignment, and stability. Any bridge or culvert found not conforming with the design of the improvement shall be scheduled for removal and replacement or repair as the engineer considers necessary.

If, in the judgment of the county engineer, the culverts and bridges were adequate in capacity or vertical and horizontal alignment at the time of their installation, the removal and replacement with a comparable, adequate culvert or bridge shall be made at the expense of the project less any costs, which shall be apportioned by the engineer, for correction, maintenance, or replacement of the culvert or bridge in whole or in part due to deterioration or instability had the structure been left in place. The latter costs shall be specially assessed to the owner.

Any culvert or bridge, except those on state and federal highways, washed out in whole or part, but otherwise meeting the requirements of the improvement, shall be scheduled in the project plans for such repairs, additions, or other corrective measures as in the opinion of the engineer are necessary to the preservation of the bridge or

culvert, the costs of which shall be assessed to the owner for reasons that the culvert or bridge was improperly designed and constructed.

Fences and floodgates impeding the flow of water shall be removed as a part of the improvement. Replacement may be made by the owner, provided that prior written approval is obtained from the county engineer.

Any owner may furnish the work and material in lieu of a special assessment, provided he makes written application to the county engineer within ten calendar days after the final hearing, furnishes the work and materials in accordance with the specifications for the improvement, performs same so as not to delay the project contractor, and completes the work prior to the completion of the work on the whole improvement. Should the owner default on any or all of these conditions, the county engineer shall recommend to the board of county commissioners that the default be completed by an extra work order to the project contractor and its cost assessed to the owner.

Effective Date: 04-09-1981 .

#### **6131.48 Extra compensation - pro rata reductions.**

If in the progress of the work upon any improvement there occurs bed rock, flowing sand, or other items not noted in the engineer's report that must be removed or controlled in completion of the required work or causes another function to be performed and that will require additional cost or, if in the progress of the work nonbid material or labor, or both, is needed, the board of county commissioners may, by an order entered on its journal, order the nonbid work to be done by the contractor under the direction and supervision of the county engineer. The actual expense thereof shall be paid as extra compensation, on the certificate of the engineer and the allowance thereof by the board, as a part of the cost of the improvement.

If after the contract is let a change is made in the construction of the work that in any manner will materially lessen the cost of the construction or the cost of material or labor, or both, the engineer shall certify that fact to the board, and the board shall make a reduction pro rata in the amount of the contract price.

Effective Date: 04-09-1981 .

#### **6131.49 Installment payments to contractor - final progress estimate.**

Installment payments shall be paid to the contractor as work progresses, in accordance with section 151.13 of the Revised Code. Progress estimates may be paid semimonthly when the amount due exceeds one thousand dollars on a contract having a value of ten thousand dollars or more. Monthly payments may be made in all other cases when the amount due is five hundred dollars or more.

Materials meeting the project specifications delivered to the job site or such other place as the engineer may approve shall be included in the progress estimate as provided in section [153.14](#) of the Revised Code.

The amount payable on the progress estimate shall be the grand total to date of all items of work and materials included in the bid and such approved extra items of work and materials as are furnished in accordance with the contract and accepted by the engineer, less an amount retained pursuant to section [153.12](#) of the Revised Code.

The amount payable so determined shall be certified by the county engineer to the board of county commissioners who shall authorize the county auditor to draw his warrant upon the county treasurer. The treasurer shall pay the warrant out of any funds in the treasury applicable to that purpose.

The final progress estimate, including the total of the retained moneys and less any liquidated damages, shall be approved by the contractor, the county engineer, and the board of county commissioners before the auditor shall draw his final warrant upon the treasurer.

The final estimate shall not be processed for payment until such time as the contractor furnishes an affidavit stating that all indebtedness incurred in connection with the contract has been paid in full.

Effective Date: 04-09-1981 .

### **6131.50 General drainage improvement fund.**

The board of county commissioners of each county shall provide and establish the "general drainage improvement fund," which fund shall be used as a sinking fund for all bonds issued under sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code. Said funds shall consist of:

- (A) Any taxes levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of;
- (B) The proceeds of all bonds issued and sold under sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code;
- (C) The collections from all special assessments for benefits to property, as provided in such sections;
- (D) Such other funds as by law are provided to be paid therein.

Effective Date: 08-23-1957 .

### **6131.51 General drainage improvement fund payments.**

All costs and expenses of improvements under sections [6131.01](#) to [6131.64](#) of the Revised Code, including contract prices of construction and the costs of locating the improvement, shall be paid from the general drainage improvement fund. No warrants shall be drawn to be paid from the fund unless it contains a sufficient amount not otherwise specifically appropriated to pay them.

The letting and approving of any contract for an improvement shall be considered a specific appropriation of the amount of the obligation, and that amount shall be set apart for the purpose of the payment and contingently charged against the fund. If at any time the fund contains the proceeds of bonds or notes issued and sold under such sections, the fund shall not be depleted below the obligations incurred by the bond or note issue unless assessments or levies have been made or ordered made in sufficient amount to redeem the bonds or notes as they fall due. If at any time obligations legally incurred exceed the amount of the drainage improvement fund, an amount of the general revenue funds in the county treasury equal to the deficiency, unless otherwise appropriated, may by resolution of the board of county commissioners be transferred to the general drainage improvement fund.

At any time after assessments collected for a drainage improvement exceed the amount allocated to the board for engineering expenses, the board of county commissioners may by resolution transfer from the drainage improvement fund to the general revenue fund of the county an amount equal to that amount as reimbursement of the sum previously transferred under section [6131.12](#) or [6131.30](#) of the Revised Code.

Effective Date: 04-09-1981 .

### **6131.52 Tax levy for ditch improvements by county commissioners.**

The board of county commissioners, at its March session, annually, shall, if necessary, levy upon the grand duplicate of the county a tax, not to exceed five-tenths of one mill on the dollar, sufficient to pay for the location and construction of the portions of the respective improvements located by it or for which the county has been assessed under sections [6131.01](#) to [6131.64](#), [6133.01](#) to [6133.15](#), [6135.01](#) to [6135.27](#), or [6137.01](#) to [6137.14](#) of the Revised Code, which tax, when collected, shall be credited to the general drainage improvement fund.

For the purposes of sections [6131.01](#) to [6131.64](#), [6133.01](#) to [6133.13](#), [6135.01](#) to [6135.25](#), and [6137.01](#) to [6137.14](#) of the Revised Code, the board of county commissioners may levy a tax under division (X) of section [5705.19](#) of the Revised Code upon all of the property listed and assessed for taxation in the county. In addition to the actions required under section [5705.19](#) of the Revised Code, the board shall cause to be filed with the county auditor and the board of elections of the county, at least sixty days prior to the passage of the resolution required under that section, an accurate map showing the locations and types of any proposed improvements, the areas to be benefited, and the existing system of drainage improvements that is to be maintained from the proceeds of the levy.

Any funds collected as a result of such a levy shall be credited to the general drainage improvement fund of the county in which the tax is levied.

For the purposes of sections [6131.01](#) to [6131.64](#), [6133.01](#) to 6133.13, [6135.01](#) to [6135.25](#), and [6137.01](#) to [6137.14](#) of the Revised Code, the board of county commissioners may adopt a resolution designating any portion of the county as a drainage improvement district. If a copy of the resolution and a map or legal description of the district's boundaries have been filed with the county auditor in such form as the county auditor prescribes, the board may levy a tax within the district under division (X) of section [5705.19](#) of the Revised Code. The board shall base its designation on the location of a system of drainage improvements and on the areas to be benefited by that system. The proceeds of the levy shall only be used for the construction and maintenance of the system of drainage improvements within the drainage improvement district.

For the purposes of this section, the board of county commissioners is constituted the "taxing authority" and the county auditor is the "fiscal officer," within the purview of Chapter 5705. of the Revised Code.

Effective Date: 04-09-1981 .

### **6131.53 Tax levy for ditch improvements by township trustees.**

The board of township trustees of a township to which is apportioned by the board of county commissioners a portion of the expenses of the construction of an improvement shall levy annually upon the grand duplicate of the township a tax sufficient to pay said apportionment, but not to exceed five tenths of one mill on a dollar, and shall certify this to the county auditor on or before the fifteenth day of May in each year until all installments are provided for.

Effective Date: 10-01-1953 .

### **6131.54 Tax levy for ditch improvements by local board of education.**

If it is a party to an improvement under sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code, the board of education of a school district interested in land granted by congress for the support of public schools, unless such land has been permanently leased, and of a school district owning or holding other land for school purposes, when an assessment is made upon said land under such sections, shall pay for such assessment out of the contingent fund of the school district. If necessary for such purpose, the board may increase the levy for that fund otherwise authorized by law.

Effective Date: 10-01-1953 .

### **6131.55 Rights and remedies of owner who has not received notice.**

Any owner of land affected by an improvement who has not received notice thereof and has not had an opportunity to be heard as provided in sections [6131.01](#) to [6131.64](#), [6133.01](#) to [6133.11](#), or [6135.01](#) to [6135.27](#) of the Revised Code may bring an action in the court of common pleas of the county wherein his land is located, against the board of county commissioners in its official capacity, to recover any tax or assessment therefor, if paid, to enjoin any tax, assessment, or levy therefor upon his lands, to recover for any damages sustained, or for compensation for any property taken. The owner's rights and remedies in the action shall be the same as for any like demand. In the action the board may plead and prove the value of any actual benefit to the land by reason of the improvement in litigation. The rights granted by this section shall be in addition to all other rights provided by law.

Effective Date: 04-09-1981 .

### **6131.56 Recovery of tax or assessment - voiding proceedings - enjoining tax or assessment.**

The court in which a proceeding is brought to recover a tax or assessment paid, or to declare void the proceeding to locate or construct an improvement, or to enjoin a tax or an assessment levied or ordered to be levied to pay the costs thereof, if there is manifest error in the proceedings, shall allow the plaintiff in the action to show that he has been injured thereby. If the court finds that the board of county commissioners had jurisdiction to hear

and determine the petition and to levy the assessments, then the court may hear evidence to determine the amount of the assessment which the plaintiff shall be required to pay and enter a decree accordingly.

Effective Date: 10-01-1953 .

#### **6131.57 Permanent file of records of proceedings.**

The board of county commissioners and the county engineer shall maintain a permanent file containing a record of the petition, the applications and remonstrances filed, the orders made by the board, the preliminary estimates and preliminary report of the county engineer, the reports of review by the director of natural resources, the director of transportation, and the directors of any conservancy district, the reports of the engineer as to the construction of the improvement, and such other matter as is proper for record. A record of the assessments levied, pursuant to the order of the board, as corrected after the completion of the contract, and the schedules of payments for compensation and damages shall be kept by the county auditor. The clerk of the board of county commissioners shall, after the final hearing of the board of county commissioners or after the final judgment, order, or decree has been rendered upon any appeal, file with the county engineer all maps, profiles, and plans of the improvement, which shall be filed together with an annual record of maintenance and repair.

Effective Date: 04-09-1981 .

#### **6131.58 Fees.**

The fees to be charged and collected for services required of any public officer under sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code, if not specifically otherwise designated, shall be the fees allowed for like services in that office. If he is an officer receiving a salary, then such fees collected shall be in a like manner accounted for. Publication of notices as required in such sections shall be paid at the legal rate provided for similar matter originating in the court of common pleas.

Effective Date: 10-01-1953 .

#### **6131.59 Ditch improvement becomes public watercourse.**

When an improvement consisting of a ditch, drain, or watercourse has been established and constructed or used for seven years or more, it shall be considered to be a public watercourse notwithstanding any error, defect, or irregularity in the location, establishment, or construction thereof, and the public shall have and possess in and to any such watercourse that has thus been constructed or used for seven years the rights and privileges that relate to and pertain to natural watercourses, but the same shall be subject to any improvement upon petition as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code.

Effective Date: 04-09-1981 .

#### **6131.60 Personal interest of county commissioner.**

If one or more members of a board of county commissioners are petitioners for an improvement or own land that will be taken, benefited, or damaged by the improvement petitioned for, the clerk of the board of county commissioners shall notify the judge of the court of common pleas of the county who shall within ten days appoint as many disinterested freeholders of the county as are necessary to take the place of the interested members. The appointees shall not be related by blood or affinity to the interested members. They shall before acting be sworn to perform faithfully and impartially the duties of the members in the matter of the improvement, which oath shall be signed by them and by the officer before whom the same is taken and filed with the clerk. Upon appointment and qualification the appointee shall, in the proceedings upon the improvement, perform all the duties of the disqualified members and shall receive from the general drainage improvement fund the same per diem rate as the disqualified member receives, as shown by the record for such services, and the amount so paid shall be costs taxed in the proceedings.

Effective Date: 04-09-1981 .

#### **6131.61 Oath of witnesses.**

In any hearing provided for in sections [6131.01](#) to [6131.64](#), inclusive, of the Revised Code, before a board of county commissioners, at which testimony to determine any fact is to be received, an oath as in trials in the court of common pleas shall be administered to all witnesses before they testify. Such oath may be administered by the president of the board.

Effective Date: 10-01-1953 .

### **6131.62 Lands owned by county needing drainage.**

When in the opinion of the board of county commissioners, by resolution entered on its journal, any land owned by the county or any highway therein, under its supervision, is in need of drainage and the drainage will also specially benefit other land, the board may file a petition without bond for the improvement in the court of common pleas of the county. Upon the filing of the petition, the court shall act in the same manner, conduct the same proceedings, and make the same findings and orders as are provided in sections [6131.01](#) to [6131.64](#) of the Revised Code for a board of county commissioners. In such case the clerk of the court of common pleas shall perform all the duties provided in such sections to be performed by the clerk of the board of county commissioners. From any final order or judgment of the court, an appeal may be taken as in civil cases. All papers to be filed with the clerk of the board of county commissioners as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code shall, in the matter of such petition, be filed with the clerk of the court of common pleas. The county engineer shall obey the order of the court in any matter made his duty by sections [6131.01](#) to [6131.64](#), [6133.01](#) to [6133.15](#), and [6135.01](#) to [6135.27](#) of the Revised Code the same as if the order had been made by the board. After the assessment has been levied by the court and the contracts let, the entire record shall be certified by the clerk of the court to the clerk of the board of county commissioners to be entered upon the county drainage records, and the county auditor shall place the assessments upon the duplicate for collection as in other cases. In case of a finding or judgment by the court for compensation for property taken or damage to property by reason of the improvement, that fact and amount shall be immediately certified to the auditor who shall draw his warrant on the county treasurer for payment as provided in sections [6131.01](#) to [6131.64](#) of the Revised Code.

Effective Date: 04-09-1981 .

### **6131.63 Written agreement for construction of ditch improvement.**

Except when an owner whose land is used for agricultural purposes desires to install tile by extending or adding to his own laterals or desires to expel water therefrom into an open ditch on his own land in the same watershed, when one or more owners desire to join in the construction of an improvement that will benefit the land of the owners, and when the owners are willing to construct the improvement and pay the cost thereof, they may enter into a written agreement for the construction of the improvement, or they may enter into an agreement to construct such part of the improvement as a person mutually agreed upon apportions to each of them respectively. In the agreement the owners shall provide that the agreement and the plan and schedules of the proposed improvement shall be filed with the clerk of the board of county commissioners of the county in which the improvement is to be constructed. When the agreement and schedules are so signed, the plan is approved by a professional engineer registered in this state, and the agreement, schedules, and plan are filed with the clerk of the board of county commissioners, the clerk shall immediately refer the agreement, plan, and schedules to the county engineer for examination and review. The county engineer shall determine the adequacy of the plan and schedules and the effect of the proposed improvement on any other improvements and on any highways in the area affected. The county engineer shall also prepare a schedule of proposed assessments for the maintenance of the improvement according to an estimate of benefits accruing to each owner and an estimate of maintenance costs including the engineer's costs in preparing the schedules. The board shall pay the engineer's costs out of the county general fund. The engineer shall file with the clerk of the board of county commissioners, within sixty days, a report of his review together with such recommendations for change, amendment, or alteration of the agreement, plan, and schedules as he may determine to be necessary in the public interest. When the agreement, plan, and schedules, as presented or as amended by the owners pursuant to the county engineer's recommendations, are approved by the county engineer, the engineer shall file, within sixty days, a certificate of approval with the clerk of the board of county commissioners. Failure to file a certificate of approval within sixty days constitutes a presumption of certification and the owners may proceed to construct.



Upon the filing with the clerk of the board of county commissioners of the schedule of maintenance assessments prepared by the county engineer as provided by this section, together with his certificate of approval, the board shall proceed to set a hearing date on the proposed maintenance assessments not less than twenty-five nor more than ninety days thereafter and shall notify all persons whose names appear in the engineer's schedule of maintenance assessments in accordance with section [6131.16](#) of the Revised Code. At the hearing on the proposed assessments the board of county commissioners shall hear any evidence offered for or against the assessments proposed to be levied against any owner as shown by the schedule of assessments filed by the county engineer and shall hear any competent evidence on the question of benefits. The board, from the evidence offered, may amend and correct the assessments, and the assessments so amended or corrected shall be approved by the board and the approval entered on its journal. Once the assessments have been approved, all further proceedings in connection with the maintenance of the improvement shall be in accordance with Chapter 6137. of the Revised Code. The clerk shall record the agreement, plan, and schedules in the drainage records of the county, and the agreement shall locate and establish the improvement as a public watercourse. The improvement shall then be constructed by the owner in accordance with the approved plans.

This section shall not be interpreted to include improvements or changes in stream channels that may be made by the department of transportation or other public agencies or railroads at their own expense for the purpose of providing a more adequate waterway along a highway or at the site of a bridge or culvert or to improve conditions of flow through them or for the purpose of protecting the highway or road bed and that do not limit future deepening of the channel.

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### **6131.631 New single span bridge or culvert or extension of existing culvert limiting future deepening of public watercourse.**

When construction of a new single span bridge or culvert or extension of an existing culvert that will limit the future deepening of a public watercourse is contemplated in connection with the construction of a state highway or other public improvement, the director of transportation or other public agency proposing the construction shall file plans for the construction with the clerk of the board of county commissioners of the county in which the construction or improvement is to be constructed, who shall immediately refer the plans to the county engineer for examination and review.

The county engineer shall review the proposed location, both horizontal and vertical, of the proposed structures and the effect of the proposed improvements on any other improvements and on any highways in the area. The county engineer shall file, within sixty days, with the clerk of the board of county commissioners and the director of transportation or other public agency a report of the review with such recommendations for change, amendment, or alteration in the plans for the proposed improvement as the engineer may determine to be necessary in the public interest.

When the plans for the proposed improvements as presented, or as amended pursuant to the county engineer's recommendations, are approved by the county engineer, the engineer shall file, within sixty days, a certificate of approval with the clerk of the board of county commissioners. If the engineer does not file such a report of his review with the clerk within sixty days after the date that the plans were referred to him, the engineer's approval shall be presumed by the clerk. The improvement shall then be constructed in accordance with the approved plans at the expense of the department of transportation or other public agency.

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### **6131.64 Vacation of ditch or drain.**

Upon a petition being filed and a bond given as provided for the location and construction of an improvement, and upon the same proceedings with notice to interested parties for a hearing upon the petition, and with the same hearing as is provided for the location of an improvement, the board of county commissioners may determine whether any ditch or drain described in the petition has ceased to be a public utility, whether the public welfare no longer demands the maintenance thereof, and whether its vacation will be to the advantage of the public welfare.

If the board finds that the vacation of the ditch or drain will be conducive to the public welfare, it may declare the same to be vacated and abandoned as a public ditch or drain and its location and establishment held for naught. The private rights of persons acquired by reason of the location and establishment of the ditch or drain shall not be interfered with nor impaired thereby without due compensation being made therefor, which compensation may be assessed on property that is benefited by the vacation of the ditch or drain. All proceedings relating to the vacation of a ditch or drain shall be conducted in accordance with sections [6131.01](#) to 6131.64 of the Revised Code, with all rights of appeal as provided in such sections.

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