

## **Chapter 6137: DITCH MAINTENANCE FUND**

### **6137.01 Ditch maintenance fund definitions.**

As used in sections 6137.01 to [6137.14](#), inclusive, of the Revised Code, "owner," "benefit," and "improvement," have the meaning set forth in section [6131.01](#) of the Revised Code.

Effective Date: 08-23-1957 .

### **6137.02 County ditch maintenance fund established.**

The board of county commissioners of each county shall establish and maintain a fund within each county for the repair, upkeep, and permanent maintenance of each improvement constructed under Chapter 6131. of the Revised Code. After August 23, 1957, a maintenance fund also shall be established and maintained by each joint board of county commissioners for the repair, upkeep, and permanent maintenance of each improvement constructed under Chapter 6133. of the Revised Code. A maintenance fund shall also be established for the repair, upkeep, and permanent maintenance of each improvement constructed under Chapter 6135. of the Revised Code if the necessary privilege to do so has been granted by the legislature of the other state. If the improvement affects only a single county of the state, the board of county commissioners of that county shall establish and maintain the fund. If two or more counties of the state are affected by the improvement, the joint board of county commissioners organized under Chapter 6135. of the Revised Code shall establish and maintain the fund.

Effective Date: 04-09-1981 .

### **6137.03 Annual ditch maintenance assessment.**

The maintenance fund shall be maintained, as needed, by an assessment levied not more often than once annually upon the benefited owners, as defined in section [6131.01](#) of the Revised Code, apportioned on the basis of the estimated benefits for construction of the improvement. An assessment shall represent such a percentage of the estimated benefits as is estimated by the engineer and found adequate by the board or joint board to effect the purpose of section [6137.02](#) of the Revised Code, except that at no time shall a maintenance fund have an unencumbered balance greater than twenty per cent of all construction costs of the improvement. The minimum assessment shall be two dollars.

The maintenance assessment shall be made by the board of county commissioners in the case of a single county improvement, or by the joint board in the case of a joint county improvement, upon the substantial completion of an improvement and on or before the first day of July in each year thereafter. The assessment shall be certified by the clerk of the board to the county auditor in case of a single county improvement, and to the county auditor of each county interested in the case of a joint county improvement, and shall be placed by the auditor or auditors on the next succeeding tax duplicate to be collected and paid as other special assessments are collected and paid.

Effective Date: 04-09-1981 .

### **6137.04 Drainage maintenance district.**

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

The board of county commissioners, upon recommendation of the county engineer, may combine improvements in accordance with the type of improvement into one drainage maintenance fund so that ditches or drains that are enclosed in tile, or other improvements having similar maintenance costs, may be administered for maintenance under the same maintenance fund.

In the case of each joint county ditch improvement, the county auditor of the county having the majority of the improvement shall maintain a separate maintenance fund for the improvement. The owners subject to the original assessment for the improvement shall constitute one maintenance district for the purpose of repair, upkeep, and maintenance of the improvement.

The county engineer of the county having the majority of the improvement shall serve as the engineer in charge of maintenance and, after consultation with the engineer of any other county affected, shall annually file a report of inspection with a recommendation as to the amount of the maintenance assessment by the same procedure as provided by section [6137.03](#) of the Revised Code for assessment in the case of a single county ditch.

Effective Date: 04-09-1981 .

### **[6137.05 Repair or maintenance projects.](#)**

The maintenance fund created under authority of section [6137.01](#) of the Revised Code shall be subject to use of the board of county commissioners, or joint board of county commissioners, as the case may be, for the necessary and proper repair or maintenance of any improvement constructed under sections [6131.01](#) to [6131.64](#), [6133.01](#) to [6133.15](#), and [6135.01](#) to [6135.27](#) of the Revised Code.

(A) Whenever the board, or the joint board, from its own observation or the recommendation of the county engineer, or on the written complaint of any of the owners of lands subject to the maintenance assessment, has reason to believe the improvement is in need of repair or maintenance, it shall as a board, or by the county engineer, make an inspection of its condition, and, if it finds the need to exist, it shall make an estimate of the cost of the necessary work and material required for the purpose. If the nature of the work is such as to be done most economically and expeditiously by force account, the board shall cause the proper work to be done by that method under the supervision of the county engineer and certify the costs to the county auditor or county auditors for payment from the maintenance fund. If the finding is that necessary repair and maintenance on an improvement or improvements within a maintenance district can be more economically or efficiently done by contract, the board, or joint board in the case of a joint county improvement, shall cause the engineer to prepare proper specifications, covering the requirements for the particular case, to advertise for bids thereon, as in the case of original construction, under section [6131.24](#) of the Revised Code, and to let the contract for the required work and material to the lowest and best bidder, who, upon the performance of the work certified by the engineer, shall certify the same to the auditor or auditors for payment from the maintenance fund.

(B) When the repair or maintenance is upon a joint county ditch improvement, the amount of the cost thereof shall be certified to the auditor of each of the counties into which the ditch extends and has lands subject to the maintenance fund assessment, and the certificate shall state the proportional part of the cost to be paid from the portion of the maintenance fund in the county, according to the original apportionment of benefits on the owners in the county subject to maintenance assessment. Upon the certificates being received, the auditors of the counties obligated shall immediately forward their several amounts or vouchers therefor to the auditor of the county having the majority of the improvement through whose office, from the aggregate payments of all the counties interested, the payment for the work and material, whether by "force account" or contract, shall be paid. The location of the work required on a joint county improvement, whether in one county or another, or whether extending into two or more counties, shall not affect the obligation of contribution for any necessary work upon the improvement in any portion of its length wherever located, the improvement for maintenance purposes being considered a single unit. As far as applicable, the procedures provided by section [6133.08](#) of the Revised Code with respect to cooperation of county engineers in field work shall apply to maintenance of joint county improvements.

The repair and maintenance on any improvement may be done in part by contract and in part by force account, it being the duty of the board of county commissioners, or the joint board of county commissioners, and the county

engineer to use the best and most economical methods under local conditions for the various phases of the maintenance program, such as excavating, clearing, cleaning, snagging, physical and chemical control of land and aquatic vegetation, and repair of banks and structures.

Effective Date: 04-09-1981 .

### **6137.051 Drainage repair upon complaint of assessed owners.**

Whenever the owner of any lands assessed for construction of an improvement authorized prior to August 23, 1957, files a written complaint that the improvement is in need of repair, the county engineer or his designated representative shall make an inspection of the condition of the improvement within sixty days of receipt of the complaint and shall request the owner to accompany him. If the county engineer finds that a need exists, he shall make an estimate of the cost of the necessary work and material required for the repair. The board of county commissioners, if it finds the work to be necessary and feasible, may authorize the county engineer to make the repairs at a cost not to exceed four thousand dollars. For the purpose of paying for the necessary work and materials, the board of county commissioners may establish a drainage repair fund for the improvement to be repaired. The county engineer shall prepare and submit a schedule of assessments upon the benefiting land to the board of county commissioners in the amount of the actual costs of the repair. The board of county commissioners may revise the estimated assessments as they consider equitable and shall certify the assessments to the county auditor for collection. Not more than four semiannual installments, as taxes are paid, shall be given to owners to pay for the repair assessments, and 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 installment would otherwise become due. If the drainage repair fund for the improvement to be so repaired is inadequate for the repair, the board of county commissioners may make payment for the repair from the county general fund, which sum so paid from the general fund shall be a charge against the appropriate drainage maintenance fund to be repaid to the general fund as soon as adequate funds are available in the drainage maintenance fund.

Effective Date: 04-09-1981 .

### **6137.06 Drainage improvements.**

The county engineer shall have general charge and supervision of the repair and maintenance of all county and joint county ditches, drains, watercourses, and other drainage improvements within his county constructed under sections [6131.01](#) to [6131.64](#), [6133.01](#) to [6133.15](#), [6135.01](#) to [6135.27](#), and [6137.051](#) of the Revised Code. The county engineer shall make an inspection of the drainage improvements and, on or before the first day of June in each year, shall report to the board of county commissioners the condition of the drainage improvements and his estimate of the probable amount of funds required to repair and maintain them. The estimates shall relate to the year beginning on the first day of July next ensuing and shall be for the information of the board of county commissioners in making their annual drainage maintenance levies.

The engineer shall approve all estimates that are paid from the county drainage maintenance fund for the repair and maintenance of drainage improvements.

Any number of persons owning land along a ditch, drain, watercourse, or other drainage improvement may form an advisory committee for the purpose of notifying the county engineer of any repair and maintenance work that needs to be performed on the improvement. A committee formed for this purpose shall submit their recommendations to the engineer not later than the first day of May of any year in which its members desire to notify him of needed work. In determining the condition of the improvement in accordance with this section, the engineer shall consider the committee's recommendations.

The county auditor, before he issues his warrant for any moneys expended by the county for repair or maintenance of any drainage improvement, shall require of the county engineer the assignment of the expense to the improvement or the drainage maintenance district in connection with which the expense was incurred. The auditor shall keep such records as are necessary to show clearly at the close of each year the amount of money

expended from the drainage maintenance funds on each drainage improvement or each drainage maintenance district.

The auditor shall establish and maintain a rotary fund for the purchase of equipment, materials, and labor related to the general maintenance of watercourses under Chapter 6137. of the Revised Code. This fund shall be established and maintained by a proportionate withdrawal from the funds of each drainage improvement or each drainage maintenance district.

The engineer shall establish a rental rate for equipment purchased with this fund. This rate shall be used in charging the equipment, along with material and labor, to the drainage improvement upon which it is used in order to reimburse the rotary fund.

The duties of the county engineer with respect to maintenance of any drainage improvement shall begin upon the substantial completion of the improvement.

In preparing plans and specifications for repair and maintenance of open ditches and in carrying out the plans either by contract or force account, the county engineer shall provide for necessary clearing of tree and brush growth, removal of silt bars, spreading and leveling of spoil banks, and the preservation of a sod or seeded strip as provided in the case of new construction under section [6131.14](#) of the Revised Code, in addition to the various phases of maintenance set forth in section [6137.05](#) of the Revised Code.

Sections [6131.01](#) to [6131.64](#) of the Revised Code apply to the maintenance fund with respect to receiving bids, statements required in bids, letting contracts, competitive bidding, time allowed under contract, supervision of contractor's work, certification for payment, and other related matters.

Effective Date: 04-09-1981 .

#### **6137.07 Drainage repair and maintenance equipment.**

The board of county commissioners may purchase such machinery, tools, conveyances, or other equipment for the repair and maintenance of drainage improvements under its jurisdiction as it considers necessary. All such machinery, tools, conveyances, or equipment shall be under the care and custody of the county engineer and shall be plainly and conspicuously marked as the property of the county. The engineer shall annually, on the first day of June, make an inventory of all such items, indicating each article and stating the estimated value thereof, and deliver the inventory to the board, which shall cause it to be placed on file. At the same time he shall file with the board his written recommendations as to what machinery, tools, conveyances, and equipment should be purchased for use in the county drainage maintenance program during the ensuing year and the estimated cost thereof.

The board shall provide a suitable place for housing and storing machinery, tools, conveyances, and equipment owned by the county. All expenditures authorized by this section shall be paid out of the drainage maintenance fund or funds. If the drainage maintenance fund at any time is inadequate for such purchase or other expenditure, the board of county commissioners is authorized to make the payment from the county general fund, which sum so paid from the general fund shall be a charge against the drainage maintenance fund or funds to be repaid to the general fund as soon as adequate funds are available in the drainage maintenance fund or funds.

Effective Date: 04-09-1981 .

#### **6137.08 Reduction in maintenance assessment application.**

Any owner may make application for reduction in his maintenance assessment due to work he proposes on any portion of a public ditch, watercourse, or other improvement. The application shall be filed with the county engineer on or before the first day of May in any year and shall state the nature of the work to be done, such as clearing brush, removing silt or debris, repair of structure, or other work necessary to preserve the improvement. The county engineer, in making inspections of the drainage improvements, shall note the extent to which any owner has carried out such repair and maintenance work. In making the annual report and estimate to the board

of county commissioners, the engineer shall include a schedule containing the name of each owner who has applied for reduction of maintenance assessment due to performance of repair and maintenance work and the percentage reduction, if any, that the engineer recommends be granted each owner. The board shall either confirm or reject the allowances recommended by the county engineer. The allowance confirmed as to each land owner shall be certified to the county auditor, who shall reduce the next annual maintenance assessment of the owner by the percentage so certified.

Effective Date: 04-09-1981 .

### **6137.09 Certificate for reduction in maintenance assessment.**

The board of county commissioners may grant to any owner a reduction of not more than fifty per cent of his annual maintenance assessment provided that the owner shall have filed with the county engineer a certificate of the board of supervisors of the soil conservation district of the county in which the land is located, certifying that he is following practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and the erosion of sediment and silt into drainage channels. The certificate shall be signed by the president and the secretary-treasurer of the soil conservation district board of supervisors and it shall remain in effect until canceled by the board of county commissioners. The county engineer shall have the right to inspect the premises of any owner claiming assessment reduction due to soil and water conservation and to ask the soil conservation district for review of any certificate on file.

At the time he makes his annual report and estimate of maintenance costs, the county engineer shall transmit to the board of county commissioners all soil conservation certificates that have been filed with him. The clerk of the board of county commissioners, on or before the first day of July in each year, shall file with the county auditor a list of owners who have been certified by the soil conservation district for a fifty per cent reduction in maintenance assessment for the current year.

Effective Date: 04-09-1981 .

### **6137.10 Additional repair assessment for damages.**

If the cleaning out or repair of a ditch, drain, or watercourse, repair or replacement of tile, or repair of any abutment, catch basin, retaining wall or other improvement is made necessary in whole or in part by the negligent acts or omissions of any owner, the board of county commissioners after a hearing subsequent to thirty days notice pursuant to the provisions of section [6131.07](#) of the Revised Code may add to the maintenance assessment of such negligent owner an additional repair assessment in an amount sufficient to rectify the damage. Such added assessment shall be made on recommendation of the county engineer and certified to the county auditor at the same time the annual maintenance assessment is certified by the board.

Effective Date: 08-28-1957 .

### **6137.11 Permanent base for maintenance assessments.**

The original schedule of benefit assessments upon owners for the construction of any improvement shall be maintained by the county auditor as the permanent base for maintenance assessments. The maintenance assessments shall be levied by the county auditor in such percentage of the permanent base as is authorized by the board of county commissioners.

The board of county commissioners, before certifying the percentage of the permanent base to be levied in any one year for the drainage maintenance fund, shall consider any recommendation by the county engineer and any application by any owner for increase or reduction of the permanent assessment base as it applies to any owner.

Any such increase or reduction of the permanent assessment base with respect to any owner shall be made for the purpose of correcting any inequity that has arisen due to increase or decrease in the proportionate share of benefits accruing to the owner as the result of the construction and maintenance of the improvement.

After six annual maintenance fund assessments have been made upon the owners benefiting from an improvement, the board of county commissioners shall review the permanent base for maintenance fund assessment and may increase or decrease the respective benefit apportionments in accordance with changes in benefits that have occurred during the intervening six years.

As soon as the board of county commissioners has changed the permanent base of maintenance assessments of any owner, the clerk of the board shall send to each owner a 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. The notice shall state the amount of the present permanent base for maintenance assessment, the proposed new permanent base amount with respect to each owner so changed, and the date of a hearing on the change. The hearing shall be set by the board for a date not less than twenty nor more than thirty days from the date of adoption of the changes.

At the expiration of six years from the date of the first review of the permanent base of maintenance assessments, and at six-year intervals thereafter, the board of county commissioners shall again review the permanent base and set a hearing on any proposed changes by the procedure provided in this section for the first such review.

The board of county commissioners at any time may add to the schedule of benefited owners any other owner who in the judgment of the board is benefited by the operation and maintenance of the improvement as the result of new conditions that have arisen since the improvement was constructed. The additional owner shall be given notice in writing of his permanent maintenance fund assessment base and the date of a hearing by the same procedure as provided by this section for any owner whose permanent assessment base has been changed by the board. Notice to the additional owner shall be sent by the same type of mail as the board uses for owners whose permanent assessment base has been changed.

The hearing on the changes in, or additions to, the permanent base for maintenance assessment may be adjourned from time to time by the board of county commissioners and, upon conclusion of the hearing, the revised permanent base shall be certified to the county auditor and shall become the permanent base for maintenance assessments, except as changed from time to time with respect to individual owners.

If the board of county commissioners finds that any owner was not assessed for the construction of an improvement, but now is receiving substantial benefit therefrom, or was assessed for construction, but now is receiving substantially greater benefits therefrom, the board may after thirty days notice pursuant to section [6131.07](#) of the Revised Code hold a hearing and determine an equitable amount as an equalization assessment to be paid by the owner. The equalization assessment shall be divided into the same number of payments as the assessments for the construction of the improvement, and the payment shall be added to the next succeeding maintenance assessments of the owner until the entire amount of the equalization assessment has been paid.

Any owner affected by an increase in the assessment base as it applies to him, or who has been added to the schedule of benefited owners, or who has been determined to be subject to an equalization assessment, all as provided in this section, may appeal to the court of common pleas from a final order made by the board of county commissioners, in the manner provided by sections [6131.25](#) to [6131.36](#) of the Revised Code, the question of whether any such assessment is levied according to benefits.

In the case of drainage maintenance districts for which the board of county commissioners has authorized a single drainage maintenance fund, a review of the permanent base of maintenance assessments shall be made not later than six years after the creation of the drainage maintenance district, and at six-year intervals thereafter, by the same procedure as provided by this section for review of the permanent base with respect to a single improvement, and it shall not be necessary to review the entire maintenance base for any improvement included in the maintenance district until the board reviews the maintenance base for the entire district.

Effective Date: 07-05-1983 .

**[6137.111 Alternative levy of assessments apportioned according to tax value.](#)**

In lieu of the permanent assessment base and procedure specified in section [6137.11](#) of the Revised Code, the board of county commissioners may by resolution levy upon the benefited property assessments apportioned according to tax value. The assessments shall be in the amount determined by the board to be necessary to obtain funds for the ditch maintenance fund.

Prior to the adoption of the resolution levying the assessments, the board shall give at least ten days' notice in one newspaper of general circulation in the county, which shall state the time and place when and where the resolution shall be taken up for consideration. At that time and place or at any adjournment thereof, of which no further published notice need be given, the board shall hear all persons whose properties are proposed to be assessed, shall correct any errors and make any revisions that appear to be necessary or just, and may then pass a resolution levying upon the properties determined to be benefited such assessments as so corrected and revised.

Any owner of property to be so assessed may appeal to the court of common pleas from the resolution made by the board of county commissioners, in the manner provided by sections [6131.25](#) to [6131.36](#) of the Revised Code, the question of whether any such assessment is levied according to benefits.

The assessments levied by the board's resolution shall be certified to the county auditor for collection as other taxes in the year or years in which they are payable. Any increase or reduction of the assessments levied under this section shall be made at the regular six-year reappraisal of all property in the county under section [5713.01](#) of the Revised Code or through adjustments made for property divisions, improvements, and changes.

Effective Date: 04-09-1981 .

#### **6137.112 Permanent base review of improvements; estimation of construction cost.**

(A) At the time that the board of county commissioners reviews the permanent base of an improvement for maintenance fund assessments after six annual maintenance fund assessments have been made as provided in section [6137.11](#) of the Revised Code, the board may request the county engineer to estimate the construction cost of the improvement if that improvement were to be constructed at the time of the permanent base review. Not less than thirty days prior to a hearing at which the board will consider the estimate as the construction cost of the improvement, the clerk of the board shall send to each owner that would be affected a 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. The notice shall state the amount of the present permanent base for maintenance assessment, the proposed new permanent base amount with respect to the owner, and the date of the hearing on the proposed change.

(B) The board of county commissioners, by adoption of a resolution at the hearing required under division (A) of this section, may approve the estimate as the construction cost of the improvement in lieu of the original construction cost of the improvement. If approved, the estimate of construction cost shall be the permanent base that is used to calculate maintenance fund assessments for owners benefiting from the improvement. The approved estimate of construction cost shall serve as the permanent base for the purposes of this chapter until such time as it is revised in accordance with this section.

Added by 129th General Assembly File No.7, HB 114, §101.01, eff. 6/29/2011.

#### **6137.12 Permanent easement for maintenance and cleaning of ditches.**

In the cleaning, repair, and other maintenance work on drainage improvements, the persons whose duty it is to perform the maintenance work may go upon the adjoining or abutting lands within the permanent easement necessary for proper operation of the required machinery, tools, motor vehicles, conveyances, or other equipment.

In the case of open ditches, the permanent easement so used shall be not more than twenty-five feet from the top of the bank, measured at right angles thereto, and wherever practical the area so used shall be on one side of the ditch only. When in his opinion an emergency situation exists at an open ditch needing maintenance, the

county engineer may, with the approval of the board of county commissioners, temporarily extend the easement to not more than seventy-five feet from the top of the bank, measured at right angles thereto, in order to conduct the necessary maintenance work and alleviate the condition or conditions causing the emergency situation. The maximum width of permanent easement for closed ditches shall not exceed eighty feet centered on the center-line of the improvement. The permanent easement for all other improvements shall be as located and the width as specified by the county engineer. When the performance of maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall be granted damages equal to market value, to be paid from the permanent maintenance fund established for the improvement. Under contract work, the county engineer may specify the right-of-way to be used within the permanent easement. Where the nature of the surface of the adjoining or abutting land does not prevent it, and there are growing crops on one side of the ditch but none upon the other, the right-of-way provided for shall be used on that side of the ditch on which there are no growing crops. In using the right-of-way, the persons performing maintenance shall, as far as possible, avoid damage to the owner of the adjoining or abutting lands.

If in the doing of this work it is necessary to damage or temporarily remove any fences, poles, or wire lines, the cost of repairing, removing, and replacing the fences, poles, and wire lines shall be included in the total cost of the maintenance.

This section does not authorize passage across, along, or between railroad tracks until thirty days after notice has been mailed in accordance with section [6131.07](#) of the Revised Code.

Effective Date: 04-09-1981 .

#### **6137.13 Cleaning or repair of interstate ditches.**

That part of interstate ditches within the state may be cleaned or repaired pursuant to sections [6137.01](#) to [6137.12](#), inclusive, of the Revised Code. Such sections shall apply insofar as they are applicable.

Effective Date: 08-23-1957 .

#### **6137.14 Inspection for violations by county engineer.**

The county engineer, in inspecting drainage channels, shall note any and all apparent violations of sections [6111.01](#) to [6111.04](#) of the Revised Code, as such sections refer to the pollution of drainage channels. Whenever it appears to the county engineer, after investigation, that there has been a violation of section [6111.04](#) of the Revised Code, the county engineer shall give written notice to the county board of health, setting forth any thing or act done or omitted to be done or claimed to be in violation of such section. The county board of health shall immediately pursue the alleged violation to its legal conclusion.

Effective Date: 04-09-1981 .

#### **6137.15 Agreements with local soil and water conservation districts.**

The board of county commissioners with the advice of the county engineer may enter into agreements with local soil and water conservation districts for the purposes of planning, constructing, or maintaining works of improvement constructed under Chapters 6131., 6133., 6135., 6137., and 6151. of the Revised Code.

Effective Date: 04-09-1981 .