



Sub. H.B. 549
123rd General Assembly
(As Passed by the General Assembly)

Reps. Terwilleger, Corbin, Allen, Taylor, Netzley, Schuring, Hollister, Redfern, Clancy, Oلمان, Evans, Bender, A. Core, Amstutz, Widener, Austria, Cates, Logan, Stevens, Hoops, Vesper, O'Brien, Roberts

Sens. Carnes, Gardner, White

Effective date: *

ACT SUMMARY

- Modifies certain county road and water supply, sanitary, and drainage facilities laws relative to the procedures for the acquisition, construction, maintenance, and operation of various facilities and other improvements and the procedures for financing the various improvements.
- If there is no petition from property owners requesting the repair, allows a board of township trustees by majority vote, rather than by unanimous vote, to repair a road primarily to improve surface drainage if the costs of the improvement will be paid only from township funds or a road levy.

TABLE OF CONTENTS

Overview..... 3

Uniform Public Securities Law..... 4

 Continuing law largely retained by the act..... 4

 Changes made by the act..... 5

County Engineers Law..... 5

 Continuing law largely retained by the act..... 5

 Changes made by the act..... 5

County Road Improvements Law..... 6

 Section 5555.01..... 6

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

Section 5555.022	6
Section 5555.43	9
Section 5555.46	10
Section 5555.51	10
County Water Supplies System Law.....	10
Section 6103.01	10
Section 6103.02	12
Section 6103.03	14
Section 6103.04	14
Section 6103.05	14
Section 6103.081	15
Sections 6103.12 and 6103.13	16
Section 6103.15	16
Section 6103.20	17
Sections 6103.21, 6103.22, 6103.23, and 6103.24	17
Section 6103.25	18
Section 6103.29	18
Section 6103.31	18
Sewer Districts and County Sewers Law.....	19
Section 6117.01	19
Section 6117.011	22
Section 6117.02	22
Section 6117.04	28
Section 6117.05	29
Section 6117.06	30
Section 6117.08	32
Section 6117.23	33
Section 6117.251	33
Section 6117.28	34
Section 6117.29	36
Section 6117.30	36
Section 6117.32	36
Section 6117.34	37
Section 6117.38	37
Section 6117.39	39
Section 6117.41	40
Section 6117.42	40
Section 6117.43	41
Section 6117.44	41
Section 6117.45	42
Section 6117.49	42
Regional Water and Sewer Districts Law.....	43
Continuing law.....	43



Changes made by the act	44
Revised Code meaning of "county" terms	45
Other provisions relating to counties and municipal corporations	46
Repair of a public road by a board of township trustees to improve drainage	46
Application of the act's provisions	47

CONTENT AND OPERATION

Overview

The act amends and enacts numerous provisions in three *principal laws*--the County Road Improvements Law (R.C. Chapter 5555.), the County Water Supplies System Law (R.C. Chapter 6103.), and the Sewer Districts and County Sewers Law (R.C. Chapter 6117.)--relative to the procedures for the acquisition, construction, maintenance, and operation of various facilities and other improvements and the procedures for financing the various improvements. The act also makes related changes in several other bodies of law, including the Uniform Public Securities Law (R.C. Chapter 133.), the County Engineers Law (R.C. Chapter 315.), and the Regional Water and Sewers Districts Law (R.C. Chapter 6119.). The act also enacts a statute that adds rules of construction that are related to "county" terms in the Revised Code and that focus on *charter* counties (sec. 1.62).

Many sections of the County Water Supplies System Law (CWSS Law) have equivalent counterparts in the Sewer Districts and County Sewers Law (SDCS Law). Sections in the CWSS Law often contain references to the SDCS Law, and vice versa. The act makes parallel changes in both the CWSS Law and the SDCS Law; the result is that a large number of the sections of the CWSS Law and their SDCS Law counterparts are virtually identical to one another. The chart at the end of this analysis (Appendix) lists both: (1) the sections of the CWSS Law that are contained in the act, and (2) their counterparts in the SDCS Law, which the act also contains.

With only a few exceptions, this analysis is organized in a numerical manner as the various laws mentioned above appear in the act. Certain portions of the analysis are organized in a *narrative* fashion to more completely describe former law and the changes the act makes to it. The portions of the analysis, however, that focus on *the three principal laws* consist of a brief introduction followed by a section-by-section examination of the provisions of each of the laws organized in a "dot point" fashion.



Uniform Public Securities Law

Continuing law largely retained by the act

The Uniform Public Securities (UPS) Law provides that the taxing authority of any subdivision may issue securities of the subdivision for the purpose of paying all or any portion of the costs of any permanent improvement that the subdivision is authorized to acquire, improve, or construct. These securities may be issued prior to the completion of any proceedings required to authorize the permanent improvement or the expenditure of the proceeds of the securities. (Sec. 133.15(A).)

Costs of permanent improvements that may be financed with, and paid from the proceeds of, securities include, among others, the costs of the following:

- Acquiring, constructing, reconstructing, rehabilitating, installing, remodeling, renovating, enlarging, equipping, furnishing, or otherwise improving permanent improvements;
- Site clearance, improvement, and preparation;
- Acquisition of real or personal property;
- Indemnity and surety bonds and premiums on insurance;
- All related direct administrative expenses and allocable portions of direct costs of the subdivision;
- Engineering, architectural, legal, and other consulting and professional services;
- Designs, plans, specifications, feasibility or rate studies, appraisals, surveys, and estimates of cost;
- Interest or interest equivalent on the securities, whether capitalized or not;
- Financing costs;
- Title work and title commitment, insurance, and guaranties;
- Amounts necessary to establish any required debt service reserve or other reserves;
- Audits;



- The reimbursement of moneys advanced or applied by or borrowed from any person, whether to or by the subdivision or others, from whatever source provided, for the payment of any item or items of cost of the permanent improvements;
- Certain other necessary or incidental expenses.¹ (Sec. 133.15(B).)

Changes made by the act

The act continues the UPS Law's latter provisions. It also provides that proceedings for the issuance of securities for any permanent improvement for which *special assessments* are not to be levied and collected may authorize: (1) the improvement, and (2) the expenditure of the securities' proceeds and any other funds available and appropriated for the improvement without the prior or subsequent necessity of instituting or completing proceedings that "special assessment--public improvement" statutes otherwise might require before an authorization of that type (sec. 133.15(A)).

County Engineers Law

Continuing law largely retained by the act

Under continuing law, a county engineer must inspect all public improvements made under authority of the board of county commissioners; must make all surveys required by law; must perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the board's authority; and must perform other duties that the board requires. One exception is that duties described in the Solid Waste Management Districts Law (R.C. Chapter 343.), the County Water Supplies System Law (see "**County Water Supplies System Law**," below), and the Sewer Districts and County Sewers Law (see "**Sewer Districts and County Sewers Law**," below) can be performed only pursuant to an agreement between the county engineer and the board of county commissioners. (Sec. 315.14.)

Changes made by the act

The act provides that the latter type of agreement may provide for the county engineer's performance of duties described in one or more of the three laws and may provide for a county engineer's performance: (1) of *all duties imposed upon a county sanitary engineer* under the County Water Supplies System Law

¹ The act cross-references this list of costs in the UPS Law in several locations. This analysis refers to the list as the "UPS Law's list of costs."

and the Sewer Districts and County Sewers Law, or (2) of only the duties imposed upon a county sanitary engineer under the Sewer Districts and County Sewers Law in relation to drainage (sec. 315.14).

County Road Improvements Law

The County Road Improvements (CRI) Law in Chapter 5555. of the Revised Code covers any state or county road or part of any state or county road, any state or county road and any municipal corporation street, or part of a road or street of those types, that form a continuous road improvement. Among the CRI Law's provisions are provisions pertaining to the issuance of *bonds* in connection with, as well as *tax levies and assessments* to cover the costs of, these types of improvements.

The act modifies the CRI Law as follows:

Section 5555.01

- Adds a definition of "cost" or "costs" that includes: (1) compensation, damages, and expenses that are incident to an improvement covered by the CRI Law, and (2) all the items of cost in the UPS Law's list of costs that are incident to an improvement covered by the CRI Law.²
- Adds a definition of a "public obligation" that has the same meaning as in the UPS Law. (See **COMMENT 1.**) The act relatedly amends a few statutes in the CRI Law to substitute the broader term "public obligation" for the former more limited term "bond."

Section 5555.022

- Permits a board of county commissioners, by resolution adopted by a majority vote and acting without regard to or the necessity for a petition: (1) to find that the public convenience and welfare require the improvement of any public road or roads, or parts of any public road or roads, identified in that resolution in a specified manner, and (2) to fix the route and termini of the improvement.³

² *The continuing CRI Law uses the phrase "compensation, damages, and expenses" in a few of its operative provisions, so the first portion of the new definition actually reflects continuing law (see secs. 5555.43, 5555.46, and 5555.51).*

³ *Section 5555.06 provides that a board of county commissioners, by resolution adopted by a unanimous vote, may find that the public convenience and welfare require the improving of any public road or part of a public road by grading, draining, paving,*



- Permits the board of county commissioners, if it determines in that resolution or in a subsequent resolution that *special assessments* are not to be levied and collected to pay any part of the county's costs of the improvement: (1) to authorize the improvement and the expenditure of funds required by the county for its construction in that resolution or in a subsequent resolution (including a resolution authorizing the issuance or incurrence of public obligations for the improvement), and (2) to generally proceed with the improvement without regard to most procedures specified in the CRI Law.
- Specifies that this CRI Law statute applies to and authorizes: (1) an improvement located wholly within a single county, (2) an improvement located in a county and one or more other counties in Ohio, (3) an improvement along the county line between a county and one or more other counties in Ohio, (4) an improvement extending from a county into or through one or more adjoining counties in Ohio, and (5) an improvement on or along the line between Ohio and an adjoining state.
- Requires, if an improvement involves *more than one county* in Ohio, the determination in a *multi-county agreement* of the portion of the cost of the improvement to be borne by each county; specifies that the determination must be made: (1) after deducting any amount agreed to be paid by any township in which the improvement is located in whole or in part, and (2) without regard to or necessity for a joint board of county commissioners; and permits the counties to proceed as described above if special assessments are not to be levied and collected *or* to proceed in accordance with the CRI Law's other provisions governing a single county improvement if special assessments are to be levied and collected.
- Requires, if an improvement is on or along the line between Ohio and an adjoining state, that the portion of its cost to be borne by an Ohio county be determined in an agreement between the Ohio county and the proper authorities of the adjoining state or its participating or cooperating subdivision or agency.

straightening, or widening the road and constructing or reconstructing any bridges and culverts necessary for the improvement. The resolution must fix the route and termini of the improvement, must apportion its cost in a specified manner, and must order the county engineer to prepare: (1) the necessary surveys, plans, profiles, cross-sections, estimates of cost, and specifications for the improvement, and (2) estimated assessments based upon the benefits that would result to affected real estate.



- Permits an improvement undertaken under this CRI Law statute and the proceedings for its construction and financing, including a contract for the construction, to generally include any road or roads or parts of any road or roads, and requires certain applicable "improvement--construction contract" provisions of the CRI Law to be construed accordingly.
- In connection with the *preparation and approval* of any required surveys, plans, profiles, cross-sections, estimates of cost, and specifications pertaining to an improvement undertaken under this CRI Law statute:

--Requires, in the case of a single county improvement, their preparation by the county engineer at the direction of the board of county commissioners and their approval by the board;

--Requires, in the case of an improvement undertaken cooperatively by two or more Ohio counties, their preparation by a county engineer of one of the counties as agreed to by the relevant boards of county commissioners or, if the boards are unable to so agree and certify that fact jointly to the Director of Transportation, by a county engineer of one of those counties designated by the Director, and their approval by each of the boards;

--Requires, in the case of an improvement on or along the line between Ohio and an adjoining state, their preparation by the county engineer of the Ohio county and their approval by the board of county commissioners of that county and by the proper authorities of the adjoining state or its participating or cooperating subdivision or agency.

- Authorizes, in the case of an improvement undertaken pursuant to this CRI Law statute on or along the line between Ohio and an adjoining state, a board of county commissioners to join in its construction with the Department of Transportation and the equivalent department of the other state as if the improvement were wholly within Ohio.
- Authorizes, when multiple counties associated with an improvement undertaken pursuant to this CRI Law statute are unable to agree upon the portion of the costs of the improvement to be borne by each county and certify that fact jointly to the Director of Transportation, the Director to make the apportionment and certify it to each of the counties.



- Permits a board of county commissioners to order that the county's cost of an improvement undertaken pursuant to this CRI Law statute be paid from tax levies or a road improvement fund referred to below.
- Authorizes a county to enter into an agreement with any township in which an improvement undertaken pursuant to this CRI Law statute is located in whole or in part for the allocation of the cost between the county and the township.
- Specifies that appropriation of real property or interests in real property proceedings (i.e. eminent domain proceedings) needed by a county for an improvement undertaken pursuant to this CRI Law statute must take place in accordance with the Appropriation of Property Law.
- Specifies that, if a multi-county improvement is undertaken under this CRI Law statute and if public obligations are issued or incurred to pay the costs of the improvement:

--The obligations must be issued separately by each county for its portion of those costs;

--Their boards of county commissioners may provide for the construction of a portion of the improvement wholly within one county.

- Generally provides that the required or permissive board of county commissioners actions listed above may be taken by a majority vote of the board's members.

Section 5555.43

- Permits a board of county commissioners, *unless acting pursuant to section 5555.022's procedures* (see above), or a joint board of county commissioners, upon a unanimous vote and without a petition:

--To order that all of a county's costs (the act's new defined term) for constructing any improvement be paid out of the proceeds of any tax levies for road purposes on the county's grand duplicate or out of any road improvement fund available for the payment of those costs; or

--To enter into an agreement with the boards of township trustees of the townships in which the improvement is situated in whole or in part for the payment of the entire cost of the improvement by the county and townships, or one or more of them, in the agreed upon proportion or amount of the cost.



Section 5555.46

- Requires that, if *public obligations* (the act's new term substituted for former law's "bonds") are issued or incurred to pay the *costs* (the act's new term) of an improvement, the principal sum of the assessments made under the CRI Law be payable in a number of semiannual installments as will provide a fund for the redemption of the public obligations so issued or incurred.
- Similar to former law, requires the assessments mentioned above to bear interest from the date of and at the same rate or rates as those public obligations.

Section 5555.51

- Permits a board of county commissioners, in anticipation of the collection of taxes, or *taxes* (added by the act) and assessments, for a road improvement or any part of a road improvement to issue and sell *or incur* (added by the act) *public obligations* (the act's new term substituted for prior law's "bonds") of the county under the UPS Law.
- Permits those public obligations to cover the *costs* (the act's new term) of the improvement, in contrast to former law's limitation that bonds be in an amount that is not greater than the aggregate sum necessary to pay the estimated compensation, damages, and expenses of the improvement.
- Specifies that the making of any special assessments under certain CRI Law provisions is not a condition precedent to the issuance or incurrence of *public obligations* (replacing prior law's "bonds") and that special assessments may be made either before or after the issuance or incurrence of the public obligations.

County Water Supplies System Law

The County Water Supplies System (CWSS) Law is located in Chapter 6103. of the Revised Code. The act amends certain, but not all, of the provisions of the CWSS Law. Its changes to the CWSS Law include, but are not limited to, the following:

Section 6103.01

- Defines the terms "public water supply facilities," "water supply facilities," "water supply improvement," and "improvement" to mean



*water wells and well fields, springs, lakes, rivers, streams, or other sources of water supply, intakes, pumping stations and equipment, treatment, filtration, or purification plants, force and distribution lines or mains, cisterns, reservoirs, storage facilities, necessary equipment for fire protection, other related structures, equipment, and furnishings, and real estate and interests in real estate, necessary or useful in the proper development of a water supply for domestic or other purposes and its proper distribution.*⁴

- Adds definitions of "current operating expenses," "debt charges," "permanent improvement," "public obligations," and "subdivision," which have the same meanings as in the UPS Law. (See **COMMENT** 1 and 2.) The act relatedly amends several statutes in the CWSS Law to substitute references to the broader term "public obligations" (which are "issued or incurred") for prior references to the more limited "bonds," "notes," or "certificates of indebtedness" (secs. 6103.02, 6103.04, 6103.07, 6103.081, 6103.11, 6103.12, 6103.20, and 6103.23).
- Defines "construction," "construct," or "constructing" to mean construction, reconstruction, enlargement, extension, improvement, renovation, repair, and replacement of water supply facilities, but not to include repairs, replacements, or similar actions that do not constitute and qualify as permanent improvements.
- Defines "maintenance," "maintain," or "maintaining" to mean repairs, replacements, and similar actions that constitute and are payable as current operating expenses and that are required to restore water supply facilities to, or continue water supply facilities in, good order and working condition, but not to include construction of permanent improvements.
- Defines "public agency" to mean a state and any agency or subdivision of a state, including a county, municipal corporation, or other subdivision.
- Defines "county sanitary engineer" to mean: (1) the registered professional engineer employed or appointed by the board of county commissioners, or (2) the county engineer for so long as and to the extent the county engineer is retained to discharge the duties of a county

⁴ *These terms replace former law's definition of "public water supply." All of the italicized terms are added by the act. The reference to real estate and interests in real estate replaces prior reference to "lands, rights of way, and easements."*



sanitary engineer. This definition has application in several statutes in the CWSS Law that impose duties upon a county sanitary engineer, such as the preparation or "causing the preparation" of various documents such as detailed plans, specifications, estimates of costs, and tentative assessments associated with water supply improvements (secs. 6103.02, 6103.05, 6103.11, 6103.15, and 6103.20). (See also "County Engineers Law," above.)

Section 6103.02

- Continues authority for a board of county commissioners to acquire, construct, maintain, and operate public water supply facilities within its county for one or more *sewer districts*.⁵
- Authorizes a board of county commissioners: (1) to contract with any public agency or person for the management, maintenance, operation, and repair of public water supply facilities, and (2) to contract with any public agency or person operating public water supply facilities in or outside of the county, rather than with only a municipal corporation or person as under former law, to supply water to a county sewer district.
- Allows a board of county commissioners' rules governing the construction, maintenance, protection, and use of county-owned or county-operated public water supply facilities outside municipal corporations and of public water supply facilities within municipal corporations that are owned or operated by the county or that are supplied with water from water supply facilities owned or operated by the county to include rules for: (1) the *termination of water service* for nonpayment of county water rates and charges in accordance with reasonable procedures, and (2) the establishment and use of *security deposits* to ensure payment of those rates and charges.
- Allows the entry by the county sanitary engineer, or the engineer's authorized assistants or agents, on private or public property to make surveys or inspections for the design or evaluation of county public water supply facilities after a specified written notice is delivered in advance to the property owner and after presenting specified identification; provides that this entry is not a trespass or an entry in

⁵ Relatedly, the act amends numerous statutes in the CWSS Law to consistently refer to the four terms--*acquisition, construction, maintenance, and operation*--in connection with water supply improvements or water supply facilities (secs. 6103.03, 6103.04, 6103.11, 6103.15, 6103.17, 6103.21, 6103.22, 6103.23, 6103.24, and 6103.25).

connection with any pending appropriation of property (eminent domain) proceeding; and prohibits public agencies, in addition to individuals and private entities as under continuing law, from forbidding or interfering with this entry.

- Authorizes the board of county commissioners to assess reasonable rates for water supplied to public agencies and persons when the source of supply or the distribution facilities are county-owned or operated, to periodically change those rates, and to include in them *penalties for late payments*.
- Allows a board of county commissioners, when the county owns distribution facilities, to establish reasonable charges to be collected for the *privilege of connecting* to the facilities, and requires, prior to a connection, that the charges be paid in full or a specified type of installment payment arrangement be provided for.
- Requires, in connection with those installment payment arrangements, a board of county commissioners to certify certain information to the county auditor, who then must record the information in the Water-Works Record until the connection charges are paid in full.
- In addition to generally continuing collection mechanisms pertaining to unpaid water rates and charges (certifications to the county auditor and placement upon the real property tax list and duplicate as a lien; collection in court actions), permits a board of county commissioners: (1) to *terminate* water service to a particular property until unpaid rates or charges, together with any penalties, are paid in full, and (2) to collect any unpaid rates or charges, together with any penalties, by application of any required *security deposit*.
- Modifies continuing law slightly by requiring all moneys collected as rates, charges, or penalties for water supply purposes in or for a county sewer district to be paid to the county treasurer and to be kept in a separate and distinct *water fund* established by the board of county commissioners to the district's credit.
- Permits a board of county commissioners to render *estimated bills periodically*, but requires a board to schedule *actual meter readings* at least quarterly, for water rates and charges; and allows estimated bills if a customer's meter is not accessible or the circumstances preclude a scheduled meter reading.



- Modifies the order of priority generally governing the making of payments from the county's water fund.

Section 6103.03

- Authorizes a board of county commissioners to acquire, construct, maintain, and operate water supply facilities for a county sewer district in territory of a municipal corporation or a regional water and sewer district (see "**Regional Water and Sewer Districts Law**," below) that is located in whole or in part within the county sewer district, in the same manner as provided by law with respect to territory within a county sewer district that is wholly outside of a municipal corporation or a regional district.

Section 6103.04

- Provides that, if any portion of a county sewer district is incorporated as, or is annexed to, a municipal corporation, the board of county commissioners will continue to exercise jurisdiction in the area so incorporated or annexed: (1) for the purposes of the acquisition and construction of certain water supply improvements for a specified period of time, and (2) with respect to the management, maintenance, and operation of all acquired or completed water supply improvements, including the right to establish rules and rates and charges for the use of, and connection to, the improvements, unless and until the improvements are conveyed to the municipal corporation in a specified manner.
- Sets forth circumstances under which completed water supply facilities acquired or constructed by a county under the CWSS Law for the use of the county sewer district may be conveyed by agreement to certain municipal corporations.

Section 6103.05

- Authorizes a board of county commissioners, after the board approves an *original or revised water supply general plan* prepared by or caused to be prepared by the county sanitary engineer, to adopt a resolution that generally: (1) describes the water supply improvement necessary to be acquired or constructed in accordance with the plan, (2) declares that the improvement is necessary for the preservation and promotion of the public health and welfare, and (3) determines whether or not special assessments will be levied and collected to pay for any of the improvement's cost.



- Provides that, if special assessments will not be levied and collected to pay any part of an improvement's cost, a board of county commissioners may authorize, by resolution, the improvement and the expenditure of the funds required for its acquisition and construction without regard to the CWSS Law's procedures that apply only when special assessments will be levied and collected.
- Modifies the CWSS Law's special assessment procedures in certain respects, including changes pertaining to associated resolutions and changes requiring that the notice of the public hearing, at which an improvement and tentative special assessments will be discussed, that is mailed to a municipal corporation any part of whose territory lies within the assessment district must identify any property belonging to the municipal corporation that will be assessed.

Section 6103.081

- Permits the resolution of the board of county commissioners that commences this statute's assessment procedures to additionally specify: (1) that funds are required to pay *the preliminary costs* to be *incurred prior to* the commencement of proceedings for the *construction* of contemplated water supply improvements, and (2) that those funds will be provided pursuant to this statute's assessment procedures.⁶
- Provides that, when a board of county commissioners contemplates the provision of water supply improvements for a county sewer district *by special assessments* within a county sewer district pursuant to this statute's assessment procedures, the specified notice of a public hearing on the contemplated improvements as well as another specified notice of a board meeting at which a resolution levying assessments will be discussed may be given by *first class or certified mail* to the owners of properties proposed to be assessed, *or by specified newspaper publication*, or by both manners in contrast to prior law's publication manner only.

⁶ *Section 6103.081 refers to funds needed for the preparation of the general or revised general plan of water supply for a county sewer district, for the preparation of detailed plans, specifications, estimate of cost, and tentative assessments for proposed improvements, and for incident financing and legal services costs.*

Sections 6103.12 and 6103.13

- Specifies that the cost of any improvement provided for in the CWSS Law and the cost of its maintenance and operation includes, in addition to the cost of its *acquisition or* construction, the cost of engineering, necessary publications, inspection, interest on *public obligations*, and all other items of cost incident to the improvement and *described in the UPS Law's list of costs* (italicized matter added by the act).
- Permits a county to pay *from available county funds* any part of the cost of an improvement and any part of the cost of its maintenance and operation if the board of county commissioners considers the payment to be just (italicized matter added by the act).
- Requires, when assessments are involved, the cost of the *acquisition or* construction of water supply facilities to be assessed, as an assessment district assessment, upon all the property within the county sewer district found to be benefited in accordance with the special benefits conferred, less any part of the cost that is paid by the county at large *from other available funds* (italicized matter added by the act).

Section 6103.15

- Slightly changes law authorizing a board of county commissioners to levy *revised assessments after the completion* of a water supply improvement (i.e. previous tentative assessments are *revised* because actual costs of an improvement exceed estimated costs of an improvement).
- Permits a board of county commissioners to levy *additional assessments* on property assessed for a water supply improvement, *including state land* (added by the act), in order to pay the cost of the maintenance, *repair* (added by the act), and operation of an improvement after its completion, and provides that no further notice of that additional assessment is necessary unless its amount exceeds 10% of the original cost of *acquiring* (added by the act) or constructing the improvement.
- Specifies that the additional assessments are subject to the CWSS Law's applicable "certification and collection" procedures (sec. 6103.16--not in the act), except that an assessment may bear interest at a rate a board of county commissioners considers to be appropriate.



Section 6103.20

- Specifies that, if a person or public agency applies to a board of county commissioners that has formed a county sewer district for the supply of water to that person's or public agency's properties *outside the county sewer district*, the board may contract with the person or public agency for supplying water to those properties *from water supply facilities acquired or constructed or to be acquired or constructed by the county to serve the county sewer district*.
- Requires that the amount that such a person or public agency must pay to the county to *reimburse it for the costs of acquiring or constructing* those water supply facilities cannot be less than the original *or comparable* assessment for similar property within the county sewer district or, in the absence of such an assessment, an amount the board finds "to be reasonable and fairly reflective of that portion of the cost of those facilities attributable to the properties to be served," and permits a board of county commissioners to collect the requisite payment in full, in cash or certain installments, or by assessments (in the case of properties in the county).
- Specifies that, when a board of county commissioners *purchases* a water supply facility for its county sewer district from a person or public agency: (1) it must do so at a cost that, after consultation with the county sanitary engineer, it finds to be reasonable (rather than "at a cost not to exceed its present value as certified by the county sanitary engineer" under former law), and (2) it may do so by negotiation.

Sections 6103.21, 6103.22, 6103.23, and 6103.24

- Provides that, after the formation of a county sewer district, a board of county commissioners may contract with *any public agency* to acquire or construct any water supply facilities that will be used jointly by the contracting parties; this is in contrast to prior law that permitted contracts only with a *municipal corporation or other counties*.⁷

⁷ *The contracts also may provide for the furnishing of water and for the maintenance, operation, and joint use by the contracting parties of the acquired or constructed facilities or of any suitable existing water supply or existing water supply facilities belonging to either of the contracting parties.*



Section 6103.25

- In connection with the acquisition of real estate or an interest in real estate (replacing former law's a right-of-way or easement) for the *acquisition*, construction, *maintenance*, or operation of any water supply facilities under the CWSS Law or the acquisition of the right to *acquire*, construct, maintain, and operate those facilities on property within or outside a county sewer district, authorizes a board of county commissioners to purchase the real estate, interest, or right *by negotiation*.
- Adds to the continuing provision that allows a board of county commissioners, if negotiations fail, to appropriate land by eminent domain, a preclusion that the board, in the exercise of the powers granted by the act or the CWSS Law, may not appropriate real estate or personal property owned by a municipal corporation.

Section 6103.29

- Prohibits a *public agency*, in addition to an individual or private entity as under continuing law, from: (1) tampering with or damaging an *acquired* or constructed county water supply facility or its associated apparatus or accessories, or making any connection into or with the facility, without the board of county commissioners' permission, (2) refusing to allow the county sanitary engineer to inspect a connection, (3) willfully polluting any water supply, and (4) violating any other provision of the CWSS Law.
- Permits a board of county commissioners to cause *finer* imposed for violations of the above-mentioned prohibitions (a maximum fine of \$100 under sec. 6103.99--not in the act) to be credited in the county treasury to the fund determined to be "most appropriate after consideration of the nature and extent of the particular violations."

Section 6103.31

- Specifies that, when a board of county commissioners decides to sell or otherwise dispose of water supply facilities serving a county sewer district: (1) the board must send by first class or certified mail to any *public agency* (replacing "municipality" under former law) within the area served by the facilities a copy of a notice of a hearing to consider objections to the sale or other disposition--this is in addition to a somewhat similar newspaper publication notice under continuing law, (2) the board may reject any or all bids, and (3) the board may award a



contract of sale to a responsible bidder whose proposal the board determines to be in the best interests of the county and the users of the facilities.

- Eliminates associated appeal to the probate court provisions of former law.

Sewer Districts and County Sewers Law

The Sewer Districts and County Sewers (SDCS) Law is located in Chapter 6117. of the Revised Code. The act substantially amends certain, but not all, provisions of the SDCS Law. Its changes to the SDCS Law include, but are not limited to, the following:

Section 6117.01

- Defines the following terms: "sanitary facilities," "drainage" or "waters," "drainage facilities," "county sanitary engineer," "current operating expenses," "debt charges," "permanent improvement," "public obligations," "subdivision," "construct," "construction," "constructing," "maintain," "maintaining," "maintenance," and "public agency."⁸
- Retains law that authorizes a board of county commissioners to lay out, establish, and maintain one or more sewer districts within its county and outside municipal corporations, but also authorizes a board of county commissioners to consolidate or otherwise modify the boundaries of one or more sewer districts within the county, and removes a provision requiring that these actions be done by resolution.
- Replaces all of the following terms--"main, branch, intercepting, or local sewer, or ditch, channel, or interceptor for the temporary retention of storm water," "outlet sewer and sewage treatment or disposal works," "sewers," "sewer improvements," and "sewage treatment plants"--with the term "sanitary or drainage facilities."
- Retains law that allows a board of county commissioners to acquire, construct, maintain, and operate sanitary or drainage facilities within any sewer district, but adds that the board must determine the facilities

⁸ *Similar to the CWSS Law, the definitions of "current operating expenses," "debt charges," "permanent improvement," "public obligations," and "subdivision" are tied to the UPS Law. The definitions of "construction," "constructing," "maintain," "maintaining," "maintenance," and "public agency" also are similar to those enacted in the CWSS Law.*

to be necessary or appropriate for the collection of sewage and other wastes originating in or entering the district, to comply with the provisions of contracts entered into between public agencies for the joint use of sanitary or drainage facilities, or for the collection, control, or abatement of waters originating or accumulating in, or flowing in, into, or through, the sewer district.

- Allows a board of county commissioners to provide for the protection of sanitary and drainage facilities and to negotiate and enter into a contract with any public agency or person for the management, maintenance, operation, and repair of any of the facilities on behalf of the county upon the terms and conditions that may be agreed upon with the agency or person and that may be determined by the board to be in the best interests of the county.
- Allows a board of county commissioners, by contract with any public agency or person operating sanitary or drainage facilities within or outside the county, to provide a proper outlet for any of the wastes and waters associated with the sanitary and drainage facilities and for their proper treatment, disposal, and disposition.
- Retains law that allows a board of county commissioners to create and maintain a sanitary engineering department and to appoint a registered professional engineer to be the county sanitary engineer to supervise the department for the purpose of aiding the board in the performance of its duties under the SDCS Law or its other duties regarding sanitation, but adds that the board also may take those actions for the purpose of aiding it in the performance of its duties under the CWSS Law or its other duties regarding drainage and water supply.
- Specifies that prior to the assignment of drainage facilities duties to the county sanitary engineer, if the county sanitary engineer is not the county engineer, the board first must offer to enter into an agreement with the county engineer for assistance in the performance of those duties of the board pertaining to drainage facilities. The county engineer must accept or reject the offer within 30 days after the date on which the offer is made.
- Retains law that allows a board of county commissioners to adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of sanitary and drainage facilities, but refers to those rules as applying only to "county-owned or county-operated" facilities.



- Specifies that not less than 30 days before the date on which drainage plans are submitted to the board of county commissioners for its approval, the plans must be submitted to the county engineer; authorizes the county engineer, if the county engineer is of the opinion after review that the facilities will have a significant adverse effect on roads, culverts, bridges, or existing maintenance within the county, to submit a written opinion to the board not later than 30 days after the date on which the plans are submitted to the engineer; and authorizes the board to take action relative to the drainage plans only after the earliest of receiving the written opinion of the county engineer, receiving a written waiver of submission of an opinion from the county engineer, or passage of 30 days from the date on which the plans are submitted to the county engineer.
- Specifies that the rules may include, but are not limited to, rules for the *termination* in accordance with reasonable procedures of sanitary service for the nonpayment of county sanitary rates and charges and, if so determined, the concurrent termination of any county water service for the nonpayment of those rates and charges, the termination in accordance with reasonable procedures of drainage service for the nonpayment of county drainage rates and charges, and the establishment and use of *security deposits* to the extent considered necessary to ensure the payment of county sanitary or drainage rates and charges.
- Retains law that allows a county sanitary engineer to enter upon any public or private property for the purpose of making surveys and inspections necessary for the laying out of sewer districts, but adds that the county sanitary engineer's authorized assistants or agents also may enter upon that property for those purposes.
- Specifies that an entry of that type may be made only if the county sanitary engineer or the authorized assistants or agents are properly identified in writing or otherwise and only after written notice is delivered to the property owner at least five days in advance or is mailed at least five days in advance by first class or certified mail to the owner's tax mailing address.
- Specifies that an entry of that type is not a trespass and is not to be considered an entry in connection with any pending appropriation of property proceedings.
- Retains law that prohibits a person from forbidding or interfering with an entry of that type, but also prohibits a *public agency* from doing so.

- Retains law requiring that, if actual damage is done to property by the making of a survey or inspection during that type of entry, the board of county commissioners must pay the reasonable value of the damage to the property owner, but replaces a provision requiring "the cost to be included in the assessment upon the property benefited by the improvement for which a survey and examination is made" with a provision stating that the cost must be included in the cost of the sanitary and drainage facilities and may be included in any special assessments to be levied and collected to pay that cost.

Section 6117.011

- Replaces the term "water works or sewerage systems" with the term "water supply, sanitary, or drainage facilities."
- Retains law that allows a board of county commissioners to make surveys for water supply, sanitary, or drainage facilities for any sewer district, the construction of which is contemplated, but also allows a board to make surveys for those facilities if their *acquisition* is contemplated; and eliminates language allowing a board to make surveys for those facilities if their *improvement, enlargement, or repair* is contemplated.
- Eliminates a provision that requires a contract entered into for the surveys to be executed in triplicate, and specifies that that type of contract must be signed by at least two members of the board of county commissioners rather than by the whole board as required under former law.
- Replaces references to "bonds or notes" being sold with references to *public obligations being issued or incurred*.⁹

Section 6117.02

- Replaces the term "sewers or sewerage treatment or disposal works" with the term "sanitary facilities."
- Retains law requiring a board of county commissioners to fix reasonable rates for the use of the sanitary facilities of a sewer district by every person whose premises are served by a connection to those facilities

⁹ *These types of financing changes to the SDCS Law parallel those made to the CWSS Law in the act.*

when those facilities are owned or operated by the county, and adds the following:

- (1) That the board must fix *penalties for late payments*;
 - (2) That the rates are required to be fixed for the *availability for use* of the sanitary facilities as well as for their actual use;
 - (3) That the rates are to be paid by *public agencies* as well as other persons;
 - (4) That the rates are to be paid by persons or public agencies whose premises are capable of being served by the facilities as well as by persons or public agencies whose premises actually are served; and
 - (5) That persons and public agencies who are capable of being served by a connection directly or indirectly to those facilities must pay the rates.
- Retains the authority for a board of county commissioners to change the rates as it considers advisable, but also specifies that the rates may be changed "from time to time."
 - Replaces the term "municipal corporation" with "public agency," which includes a state and any agency or subdivision of a state, including a county, a municipal corporation, or other subdivision.
 - Retains a provision that, when the sanitary facilities to be used by the county are owned by another municipal corporation ("public agency" replaces the latter under the act) or person, the *schedule of rates* to be charged for the county's use of the facilities must be approved by the board of county commissioners at the time it enters into a contract for that use, but adds that the board may approve a *formula or other procedure* for determining the rates in lieu of approving a schedule of rates.
 - Retains law that requires a board of county commissioners to establish reasonable charges to be collected for the *privilege of connecting* to the sanitary facilities of the district and that prohibits a person from connecting to those facilities until the charges have been paid in full or provision for their payment in installments, together with requisite security, carrying charges, and penalties, made, but adds public agencies to that prohibition.
 - Retains a provision that, if the connection charges are to be paid in installments, the board of county commissioners must certify to the

county auditor information sufficient to identify each parcel of property served by a connection, the total of the charges to be paid in installments, the amount of each installment, and the total number of installments to be paid, but specifies that the information regarding the installments must be certified with respect to *each parcel* served.

- Retains law that requires the county auditor to record the information supplied in the Sewer Improvement Record until the connection charges are paid in full, and adds that the auditor must *maintain* the information.
- Allows the board of county commissioners to include amounts attributable to connection charges being paid in installments in its billings of rates and charges for the use of sanitary facilities.
- Retains the authority, when any of the sanitary rates or charges are not paid when due, for a board of county commissioners to certify the unpaid rates or charges to the county auditor; retains law stating that the certified amount is a *lien on the property* and must be collected in the same manner as other taxes, but adds an exception that, notwithstanding a continuing provision governing counties, a county treasurer must accept a payment in that amount when separately tendered as payment for the full amount of the unpaid sanitary rates or charges and associated penalties; and adds that the lien must be released immediately upon payment in full of the certified amount.
- Specifies that, instead of or in addition to certifying unpaid rates or charges to the county auditor, a board of county commissioners may take any or all of the following actions that it considers appropriate when any sanitary rates or charges are not paid when due:

(1) Collect the unpaid rates or charges, together with any penalties, by *actions at law* in the name of the county from an owner, tenant, or other person or public agency that is liable for the payment of the rates or charges;

(2) *Terminate*, in accordance with established rules, *the sanitary service* to the particular property and, if so determined, *any county water service* to that property unless and until the unpaid sanitary rates or charges, together with any penalties, are paid in full; and

(3) *Apply*, to the extent required, any *security deposit* made in accordance with established rules to the payment of sanitary rates and charges for service to the particular property.



- Retains law that requires all moneys collected as sanitary rates in any sewer district to be paid to the county treasurer and kept in a separate and distinct fund to the credit of the district, but adds: (1) that all moneys collected as penalties for late payments also must be paid to the county treasurer and kept in the fund, and (2) that the fund is to be a *Sanitary Fund* established by the board of county commissioners.
- Replaces the term "bonds" with the term "public obligations."
- Retains law requiring moneys in the Sanitary Fund to be applied first to the payment of the cost of the management, maintenance, and operation of the sanitary facilities used by the sewer district, but adds that the moneys also may be used to pay the cost of the sanitary facilities *of or operated for* the sewer district, and specifies that the cost may include the county's share of management, maintenance, and operation costs under cooperative contracts for the acquisition, construction, or use of sanitary facilities.
- Replaces the term "principal or interest" with the term "debt charges."
- Retains a requirement stating moneys in the Sanitary Fund be applied second to the payment of debt charges payable on any outstanding public obligations issued or incurred for the construction of sanitary facilities, but adds that the moneys also must be used to pay debt charges payable on public obligations issued or incurred for the *acquisition* of sanitary facilities, and specifies that the sanitary facilities must be "for or serving the district."
- Generally retains a requirement that moneys in the Sanitary Fund also be applied second to the creation of a sinking fund for the payment of the debt, but rewords the provision to state that moneys in the Sanitary Fund also must be applied second to "the funding of a bond retirement or other fund established for the payment of security for the public obligations."
- Replaces a former provision that any surplus remaining in the Sanitary Fund could be applied to the "enlargement, extension, or replacement" of sanitary facilities with a provision that the surplus may be applied to: (1) the acquisition or construction of those facilities, or (2) the payment of contributions to be made, or costs incurred, for the acquisition or construction of those facilities under cooperative contracts.

- Eliminates a provision stating that the prior version of this SDCS Law statute did not limit or restrict the power and discretion of a board of county commissioners to determine how much of the cost of improvements had to be borne by the county at large and how much had to be specially assessed upon benefited properties, or limit or restrict the power to issue notes and bonds for the share to be borne by the county and in anticipation of the levy or collection of special assessments for the share to be specially assessed, or limit or restrict the power of the board to levy special assessments upon benefited properties for operation and maintenance whenever the rents and other funds available were not sufficient to pay costs.
- Allows a board of county commissioners to fix reasonable rates and charges, including connection charges and penalties for late payments, to be paid by any person or public agency owing or having possession or control of any properties that are connected with, capable of being served by, or otherwise served directly or indirectly by *drainage facilities* owned or operated by or under the jurisdiction of the county, including, but not limited to, properties requiring, or lying within an area of the district requiring, in the judgment of the board, the collection, control, or abatement of waters originating or accumulating in, or flowing in, into, or through, the district, and allows the board to change those rates and charges from time to time as it considers advisable.
- Requires the drainage rates and charges to be payable periodically as determined by the board of county commissioners, except that any connection charges must be paid in full in one payment, or, if determined by the board to be equitable in a resolution relating to the payment of those charges, provision considered adequate by the board must be made for their payment in installments at the times, in the amounts, and with the security, carrying charges, and penalties as may be found by the board in that resolution to be fair and appropriate.
- Allows a board of county commissioners to include amounts attributable to connection charges being paid in installments in its billings of drainage rates and charges for the services provided by the drainage facilities.
- Allows the board to do any of the following as it considers appropriate when any of the drainage rates or charges are not paid when due:

(1) Certify the unpaid rates or charges, together with any penalties, to the county auditor, who must place them upon the real property tax list and duplicate



against the property to which the rates or charges apply. The certified amount is a *lien on the property* from the date placed on the real property tax list and duplicate and must be collected in the same manner as taxes, except that, notwithstanding a provision in continuing law governing counties, a county treasurer must accept a payment in that amount when separately tendered as payment for the full amount of the unpaid drainage rates or charges and associated penalties. The lien must be released immediately upon payment in full of the certified amount.

(2) Collect the unpaid rates or charges, together with any penalties, by *actions at law* in the name of the county from an owner, tenant, or other person or public agency that is liable for the payment of the rates or charges;

(3) *Terminate*, in accordance with established rules, the *drainage service* for the particular property until the unpaid rates or charges, together with any penalties, are paid in full; and

(4) *Apply*, to the extent required, any *security deposit* made in accordance with established rules to the payment of drainage rates and charges applicable to the particular property.

- Requires all moneys collected as drainage rates, charges, or penalties in or for any sewer district to be paid to the county treasurer and kept in a separate and distinct *Drainage Fund* established by the board of county commissioners to the credit of the district.
- Requires moneys in the Drainage Fund to be applied first, except as otherwise provided in any proceedings authorizing or providing for the security for and payment of any public obligations or in any indenture or trust or other agreement securing public obligations, to the payment of the cost of the management, maintenance, and operation of the drainage facilities of, or used or operated for, the district, which cost may include the county's share of management, maintenance, and operation costs under cooperative contracts for the acquisition, construction, or use of drainage facilities and, in accordance with a cost allocation plan adopted in accordance with law retained by the act, payment of all allowable direct and indirect costs of the district, the county sanitary engineer or sanitary engineering department, or a federal or state grant program, incurred for drainage purposes under the SDCS Law.
- Requires moneys in the Drainage Fund to be applied second to the payment of debt charges payable on any outstanding public obligations issued or incurred for the acquisition or construction of drainage facilities for or serving the district or for the funding of a bond

retirement or other fund established for the payment of or security for the obligations.

- Allows any surplus remaining in the Drainage Fund to be applied to the acquisition or construction of drainage facilities or for the payment of contributions to be made, or costs incurred, for the acquisition or construction of those facilities under cooperative contracts.
- Prohibits moneys in the Drainage Fund from being expended other than for the use and benefit of the district.
- Retains law that allows a board to adopt a *cost allocation plan* that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from the Sanitary Fund of the district and that prescribes methods for allocating those costs, and makes the cost allocation plan provisions additionally applicable to the Drainage Fund.

Section 6117.04

- Replaces the term "sewer improvements" with the term "sanitary or drainage facilities."
- Modifies continuing law somewhat by providing that the authority of a board of county commissioners to acquire, construct, maintain, and operate sanitary or drainage facilities for a county sewer district in the territory of a municipal corporation, or a regional water and sewer district, that is in whole or in part within the county sewer district is the same as provided by law with respect to territory within a county sewer district that is wholly outside a municipal corporation or regional district, subject to the following in the case of facilities within a municipal corporation:

(1) The *acquisition*, construction, maintenance, and *operation* of the facilities first must be authorized *by an ordinance or resolution of the legislative authority* of the municipal corporation;

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

(3) The municipal corporation, with the prior approval of or by agreement with the board of county commissioners, may make use of the facilities in



accordance with rules established by the board and subject to any applicable requirements of the Director of Environmental Protection.

- Eliminates prior law's provision that, at any time after a district was established comprising or including a part or all of the territory within any municipal corporation, its legislative authority could authorize by ordinance or resolution the board of county commissioners to proceed with the construction or the maintenance, repair, and operation of any sewer improvement for local service within the municipal corporation; and likewise eliminates former law's provision that, after such authority had been granted, the board could proceed with the construction or the maintenance and operation of the improvements in the same manner as provided by law for improvements in districts wholly outside of municipal corporations.

Section 6117.05

- Replaces the term "sewerage improvements" with the term "sanitary and drainage facility improvements."
- Modifies continuing law somewhat by providing that, whenever any portion of a sewer district is incorporated as, or annexed to, a municipal corporation, the area so incorporated or annexed remains under the jurisdiction of the board of county commissioners for purposes of the acquisition and construction of sanitary and drainage facility improvements until all of those improvements for the area for which a resolution has been adopted by the board have been acquired or completed or until the board has abandoned the improvements.
- States that a board of county commissioners, unless and until a conveyance of the completed sanitary or drainage facilities is made to a municipal corporation, continues to have jurisdiction in the area so incorporated or annexed with respect to the management, maintenance, and operation of all sanitary and drainage facilities so acquired or completed, or previously acquired or completed, including the right to establish rules and rates and charges for the use of, and connections to, the facilities.
- Replaces the terms "bonds or certificates of indebtedness" with the term "public obligations."
- Slightly modifies continuing law to state that the incorporation or annexation of any part of a district does not affect the legality or enforceability of any public obligations issued or incurred by the county



to provide for the payment of the cost of *acquisition*, construction, maintenance, or *operation* of any sanitary or drainage facilities within the area or the validity of any assessments levied or to be levied upon properties within the area to provide for the payment of the cost of acquisition, construction, maintenance, or operation of the facilities.

- Allows any completed sanitary or drainage facilities acquired or constructed by a county for the use of any county sewer district, or any part of those facilities, that are located within a municipal corporation or within any area that is incorporated as, or annexed to, a municipal corporation, or any part of the facilities that serve a municipal corporation or such an area, to be conveyed, by mutual agreement between the board of county commissioners and the municipal corporation, to the municipal corporation on terms and for consideration that may be negotiated.¹⁰
- Requires the municipal corporation, upon and after that type of conveyance, to manage, maintain, and operate the facilities in accordance with the agreement.
- Allows a board of county commissioners to retain the right to joint use of all or part of any facilities so conveyed for the benefit of the district.
- Provides that neither the validity of the assessment levied or to be levied, nor the legality or enforceability of any public obligations issued or incurred, to provide for the payment of the cost of the acquisition, construction, maintenance, or operation of the facilities or any part of them, is affected by that type of conveyance.

Section 6117.06

- Modifies continuing law to provide that, after the establishment of any sewer district, the board of county commissioners, *if a sanitary or drainage facility improvement is to be undertaken*, may have the county engineer prepare, *or otherwise cause to be prepared*, for the district, *or revise as needed*, a general plan of sewerage or drainage: (1) that is complete in each case as can be developed at the time, and (2) that is *devised with regard to any existing sanitary or drainage facilities in the district and present as well as prospective needs for additional sanitary*

¹⁰ *The act repeals somewhat similar provisions in section 6117.42 of the Revised Code.*

or drainage facilities in the district (all italicized language added by the act).¹¹

- Provides that, after a general plan of sewerage or drainage, in original or revised form, has been approved by a board of county commissioners, the board may adopt a resolution generally describing the improvement that is necessary to be acquired or constructed in accordance with the particular plan, declaring that the improvement is necessary for the preservation and promotion of the public health and welfare and determining whether or not special assessments are to be levied and collected to pay any part of the cost of the improvement.
- Specifies that, if special assessments are not to be levied and collected to pay any part of the cost of the improvement, a board of county commissioners, by resolution, including a resolution authorizing the issuance or incurrence of public obligations for the improvement, may authorize the improvement and the expenditure of the funds required for its acquisition or construction and may proceed with the improvement without regard to the procedures otherwise required by the SDCS Law for improvements for which special assessments are to be levied and collected.
- Specifies that, if special assessments are to be levied and collected, the SDCS Law's special assessment procedures apply, and a board of county commissioners may have the county sanitary engineer prepare, *or otherwise cause to be prepared*, detailed plans, specifications, and an estimate of cost for the improvement together with a tentative assessment of the cost based on the estimate.
- Retains in modified form continuing law's requirement that, after a board of county commissioners' approval of the detailed plans, specifications, estimate of cost, and tentative assessment, and at least 24 days before adopting a resolution regarding the necessity of an improvement and related special assessments, the board cause to be sent a notice of its intent to adopt the resolution to each owner of property proposed to be assessed that is listed on the records of the county auditor for *current agricultural use valuation taxation* and that is not located in an agricultural district; and establishes an exception to the requirement to the extent that appropriate *waivers* of notice are obtained from affected owners.

¹¹Note that the act appears to contemplate two potential plans for a sewer district: a general plan for sewerage and a general plan for drainage.



- Permits, rather than requires as under former law, a board of county commissioners to adopt a resolution after complying with the requirements established in this SDCS Law statute for situations in which special assessments are levied; modifies continuing law to describe the resolution as: (1) declaring that the improvement, which must be described as to *its nature* and its location, route, and termini, is necessary for the preservation and promotion of the public health and welfare, (2) referring to the plans, specifications, estimate of cost, and tentative assessment, (3) stating the place where they are on file and may be examined, and (4) providing that the entire cost or *a lesser designated part of the cost* will be specially assessed against the benefited properties within the district *and that any balance will be paid by the county at large from other available funds*; and eliminates a permissive authority to include in the resolution the estimated cost of maintaining the improvement for one year.
- Generally retains mail notice to owners of property to be assessed, and newspaper publication notice, requirements relative to a hearing on objections to an improvement.
- Retains law that requires notice of the hearing on objections to an improvement to be mailed to *any municipal corporation* any part of which lies within the assessment district, but adds: (1) that the notice must be sent by *first class or certified mail*, on or before the date of the required second newspaper publication notice of the hearing, to the clerk (continuing law) or another official discharging the duties of the clerk of the municipal corporation, and (2) that the notice must state whether or not any property belonging to the municipal corporation is to be assessed and, if so, identify that property.
- Specifies that, at the hearing or at any adjournment of the hearing, of which no further published or mailed notice need be given, the board of county commissioners must hear all parties whose properties are proposed to be assessed (as opposed to former law's "interested parties").

Section 6117.08

- Replaces a provision prohibiting, after the adoption of a resolution to proceed with a sanitary or drainage facility improvement, *further action* from being taken or *work done* in connection with the improvement until ten days have elapsed with a provision instead requiring the *construction* of the improvement to be *deferred* until ten days have elapsed.



- Replaces the phrase "issue and sell bonds or certificates of indebtedness" with the phrase "issue or incur public obligations."

Section 6117.23

- Replaces a provision prohibiting, if an appeal is prosecuted from the judgment of a probate court relative to the question of the necessity of an improvement, *action* to be taken by the board of county commissioners in proceeding with the improvement until the appeal is finally disposed of with a provision instead requiring the *construction* of the improvement to be *deferred* until the appeal is finally disposed of.

Section 6117.251

- Replaces the phrase "sewer and sewage disposal improvements" with "sanitary or drainage facility improvements."
- Retains law that authorizes a board of county commissioners, after the establishment of any county sewer district, to determine by resolution that it is necessary to provide, maintain, and operate sanitary or drainage facility improvements, and adds that the resolution may determine: (1) that funds are required to pay the *preliminary costs* of the improvements to be incurred prior to the commencement of the proceedings for their construction, and (2) that those funds must be provided in accordance with this SDCS Law statute.
- Retains law that requires a board of county commissioners, prior to adopting that type of a resolution, to give notice of its pendency, of the proposed determination of the necessity of the improvements described in it, and of a hearing of objections to or endorsements of the improvements, but replaces former law's requirement that the notice be given by publication in a newspaper of general circulation once a week for two consecutive weeks with a requirement that the notice be given either by publication in a newspaper of general circulation *in the county* once a week for two consecutive weeks or by *mailing* a copy of the notice by first class or certified mail to the owners of the properties proposed to be assessed at their respective tax mailing addresses, or by both manners; and retains law that requires the first newspaper publication to be made at least two weeks prior to the date set for the hearing, and adds that, if a mailing is used for notice purposes, it likewise must occur at least two weeks prior to the hearing.
- Replaces the phrase "general plan of sewers or sewers and sewage disposal works" with the phrase "general plan of sewerage or drainage."



- Allows a board of county commissioners to levy a *preliminary assessment* for paying the cost of preparing a revised general plan of sewerage or drainage as well as for other purposes authorized under continuing law, such as paying the cost of preparing a general plan of sewerage or drainage.
- Replaces references to "notes and bonds" with references to "public obligations."
- Modifies continuing law that requires a board of county commissioners, prior to the adoption of a resolution levying assessments related to a sewerage or drainage improvement, to give notice of a meeting on the assessments in a newspaper of general circulation in the county by specifying instead that the notice must be given either by one publication in such a newspaper, or by mailing a copy of the notice by first class or certified mail to the owners of the properties proposed to be assessed at their respective tax mailing addresses, or by both manners; and requires that either manner of notice state the time and place of the meeting and occur at least ten days prior to the date of the meeting.
- Retains law that allows a board of county commissioners, under certain circumstances, to "authorize" contracts to carry out the purposes for which assessments have been levied without the prior issuance of notes, but also specifies that the board may "enter into" those contracts.

Section 6117.28

- Replaces references to a "sewer improvement or sewage treatment works" with references to a "sanitary or drainage facility improvement."
- Retains authority for owners of all the lots and lands to be assessed for a sanitary or drainage facility improvement, by petition in writing, to request a board of county commissioners to provide for the construction, maintenance, and operation of the improvement, describing the improvement and the lots and lands owned by them respectively to be assessed to pay the cost of the improvement and of its maintenance and operation; adds that the petition may request the board to provide for the *acquisition* of an improvement; following a petitioning of that nature, authorizes the board, rather than requiring it as under former law, to have the necessary plans, specifications, and estimate of cost of the acquisition or construction, maintenance, and operation of the improvement and a tentative assessment prepared; and clarifies that the county sanitary engineer, and not the board as under prior law, is to prepare those documents or otherwise cause them to be prepared.

- Permits, rather than requires as under former law, a board of county commissioners to proceed to cause an improvement to be acquired or constructed when landowners state, in writing, that they have examined the estimate of cost and tentative assessment and have no objections to them and that, if applicable, they waive their right or option to pay the assessments in cash; and modifies continuing law's notice-related exception to provide that, when the owners have made the written statement, none of the notices otherwise required by law need be given and no opportunity need be provided: (1) for the filing of objections to the improvement, *its character and termini, the boundaries of the assessment district*, or the tentative assessment, or (2) if bonds are issued prior to the acquisition or construction of the improvement, for paying assessments in cash.
- Replaces former law's requirement that a board of county commissioners proceed to authorize and issue bonds or certificates of indebtedness and levy and collect authorized assessments with a provision authorizing the board to proceed to issue or incur public obligations in the required amount, complete the acquisition or construction of the improvement, and levy and collect the authorized assessments.
- Prohibits a public agency, in addition to a person as under continuing law, from appealing any decision or action of a board of county commissioners regarding an improvement of that nature, except refusal by the board to proceed with the improvement.
- Retains continuing law's provision that the tentative assessment provided for in this SDCS Law statute is for the information of property owners and cannot be certified to the county auditor for collection, and clarifies that the tentative assessment also cannot be levied.
- Eliminates a provision specifying that the incidental expenses of an improvement of that nature were to be included in determining its cost.
- Generally retains law that requires a county sanitary engineer to prepare a revised assessment when the improvement is completed based on the actual cost of the improvement and in substantially the same proportion as the tentative assessment, but clarifies that the county sanitary engineer, instead of preparing the revised assessment, may otherwise cause it to be prepared.

Section 6117.29

- Replaces the terms "certificates of indebtedness" and "bonds" with the term "public obligations."
- Retains continuing law's provision that the cost of any sanitary or drainage improvement includes, in addition to the cost of its construction, the cost of engineering, necessary publications, inspection, interest on public obligations, and all other items of cost incident to the improvement, but specifies that: (1) those incident costs are those included in the UPS Law's list of costs, and (2) the cost of the improvement may include, if applicable, the cost of its acquisition.
- Retains continuing law's authority for a county to pay any part of the cost of an improvement, its maintenance, and its operation if its board of county commissioners considers the payment to be just, but clarifies that the payment is to be made from *available county funds*.

Section 6117.30

- Replaces the terms "main, branch or intercepting sewer or sewerage treatment or disposal works" with the term "sanitary or drainage facilities."
- Retains continuing law's provision that the cost of the construction of sanitary or drainage facilities to be paid by assessments must be assessed, as an assessment district assessment, upon all the property within the county sewer district found to be benefited in accordance with the special benefits conferred, less any part of the cost that is paid by the county at large, but also applies that provision to the cost of the *acquisition* of sanitary or drainage facilities and additionally specifies that, if any part of the cost is paid by the county at large, the payment is to be made *from other available funds*.

Section 6117.32

- Retains continuing law's requirement that a revised assessment be prepared upon the completion of a sanitary or drainage improvement, and specifies that the county sanitary engineer may prepare it as under continuing law or *otherwise cause it to be prepared*.
- Eliminates a reference to incidental costs that limited them to those provided for in the SDCS Law itself, probably in order to be consistent

with the act's related cross-references to costs included in the UPS Law's list of costs.

- Retains continuing law's provisions that require a board of county commissioners to confirm a revised assessment and that provide that, when it is so confirmed, the assessment is final, but adds that, when the revised assessment is so confirmed, it also is conclusive.
- Replaces references to "the cost of constructing an improvement" with references to "the cost of *acquiring* or constructing an improvement."
- Modifies continuing law to authorize a board of county commissioners, at intervals that it considers expedient, to levy an *additional assessment* on land assessed for the improvement, including state land, in order to pay the cost of the maintenance, *repair*, and operation of the improvement after its completion.
- Specifies that an additional assessment is subject to any applicable provisions of another SDCS Law statute (sec. 6117.33, not in the act) that deals with a board of county commissioners' certification of assessments, but that the assessment can bear interest at a rate that the board determines to be appropriate.

Section 6117.34

- Replaces the terms "sewer improvements or sewage treatment or disposal works" with the term "sanitary or drainage facilities."
- Retains a requirement that the Director of Environmental Protection conduct an investigation when the Director receives written complaints from certain persons alleging that unsanitary conditions exist in a county and then notify its board of county commissioners if sanitary or drainage facilities need to be *constructed* for the public health and welfare, but specifies that the Director also may find that it is necessary for those facilities to be *acquired*; and requires the Director's notice to the board to order that *corrective action* be taken.

Section 6117.38

- Modifies continuing law slightly to provide that, at any time after the formation of any county sewer district, a board of county commissioners, when it considers it appropriate, on application by a person or *public agency* for the provision of sewerage or drainage to properties of the person or public agency located outside the district,



may contract with the person or public agency for depositing sewage or drainage from those properties in facilities *acquired* or constructed or to be acquired or constructed by the county to serve the district and for the treatment, disposal, and *disposition* of the sewage or drainage, on terms that the board considers equitable.

- Specifies that the amount to be paid by the person or public agency to reimburse the county for costs of acquiring or constructing those facilities must not be less than the original *or comparable* (added by the act) assessment for similar property within the district or, *in the absence of an original or comparable assessment, the amount that is found by the board of county commissioners to be reasonable and fairly reflective of that portion of the cost of those facilities attributable to the properties to be served* (added by the act).
- Authorizes a board of county commissioners to collect the amount to be paid by the person or the public agency in full, in cash as under continuing law or in installments as a part of a connection charge, or, if the properties to be served are located within the county, by assessment against those properties.
- Eliminates former law's requirement that, when a board of county commissioners considered it necessary to contract with a corporation, individual, or public institution for depositing sewage from premises outside the district in the sewers constructed or to be constructed to serve the district, it had to so determine by resolution.
- Replaces the term "sewers" with the term "sanitary or drainage facilities."
- Modifies continuing law by providing that, whenever sanitary or drainage facilities have been *acquired* or constructed by, and *at the expense of*, a person or public agency and a board of county commissioners considers it appropriate to acquire the facilities or any part of them for the purpose of providing sewerage or drainage service to territory within a sewer district, the county sanitary engineer, *at the direction of the board*, must examine the facilities.
- Eliminates provisions requiring a county sanitary engineer, after making that type of examination and finding the facilities to be properly designed and constructed: (1) to "make an appraisal of the present value of the sewers or parts of sewers to the district as a means of providing sewerage for the territory outside the allotment, subdivision, development, or similar enterprise for which it originally was



constructed," and (2) to make in that appraisal "no allowance . . . for the value of the sewers to the territory for the service of which it was originally constructed."

- Retains the authority for a board of county commissioners to purchase the facilities, but clarifies that the board may decide to purchase *any part* of the facilities; and eliminates the requirement that the board's determination be made by resolution.
- Replaces former law's provision that the cost of purchasing the facilities could not exceed the *present value of the sewers* as certified by the county sanitary engineer with a requirement that the purchase cost must be an amount that the board of county commissioners, after consultation with the county sanitary engineer, finds to be reasonable.
- Authorizes the board of county commissioners, subject to and in accordance with specified SDCS Law provisions, to purchase the facilities or any part of them by negotiation.
- Replaces the phrase "issue bonds or certificates of indebtedness" with the phrase "issue or incur public obligations."
- Modifies continuing law slightly to authorize a board of county commissioners, for the purpose of paying the cost of acquisition of the facilities, to issue or incur public obligations and assess *the entire cost, or a lesser designated part of the cost*, of their acquisition against the benefited properties in the same manner as provided for in the SDCS Law for the construction of original or comparable facilities.

Section 6117.39

- Slightly modifies continuing law to provide that whenever, in the opinion of a board of county commissioners, it is necessary to acquire real estate or any interest in real estate (replacing prior law's right-of-way or easement) for the *acquisition*, construction, maintenance, or operation of any sewer, *drainage*, or other improvement authorized by the SDCS Law, or to acquire the right to construct, maintain, and operate the improvement in and upon any property within or outside of a county sewer district, the board may purchase the real estate, interest in real estate, or right by *negotiation*.
- Adds to the continuing provision that allows a board of county commissioners, if negotiations fail, to appropriate land by eminent domain, a preclusion that the board, in the exercise of the powers



granted by the act or the SDCS Law, may not appropriate real estate or personal property owned by a municipal corporation.

Section 6117.41

- Replaces the term "sewers" with the term "sanitary or drainage facilities."
- Modifies continuing law to authorize a board of county commissioners, at any time after the formation of any county sewer district, to enter into a contract, upon the terms and for the period of time that are mutually agreed upon, with any other public agency (replacing former law's "county or municipal corporation") to prepare all necessary plans and estimates of cost and to *acquire* or construct any sanitary or drainage facilities that are to be used jointly by the contracting parties, and to provide for the *maintenance, operation, and joint use* by the contracting parties of those facilities *or the maintenance, operation, and joint use of any suitable existing sanitary or drainage facilities belonging to either of the contracting parties* (italicized language added by the act).

Section 6117.42

- Replaces the phrase "sewer or sewage treatment or disposal works" with the phrase "sanitary or drainage facilities."
- Slightly modifies continuing law to require all contracts described under "**Section 6117.41**," above, to provide for the payment of compensation to the county or other public agency owning, *acquiring*, or constructing, or agreeing to acquire or construct, the sanitary or drainage facilities to be jointly used in an amount agreed upon as the *other party's share of the cost of acquiring or constructing the facilities*.
- Requires the contract also to provide for payment of compensation to the county or other public agency owning, acquiring, or constructing the facilities and operating and maintaining them in an amount agreed upon as the other party's share of the cost of operating and maintaining them or, in lieu of all other or differing payments, an agreed price per unit of flow.
- Modifies continuing law by providing that a county or other public agency owning, *acquiring*, or constructing, or agreeing to acquire or construct, any of the facilities and agreeing to their use by another public agency retains full control and management of the acquisition, construction, maintenance, and operation of the facilities unless

otherwise provided in the contract and except, in the case of a county, when conveyed to a municipal corporation.

- Removes a requirement that the Director of Environmental Protection approve the contract before it goes into effect.

Section 6117.43

- Replaces the phrase "sewer or sewage treatment or disposal works" with the phrase "sanitary or drainage facilities."
- Replaces the phrase "issue bonds" with the phrase "issue or incur public obligations."
- Modifies continuing law by providing that a county or other public agency contracting as discussed under "**Section 6117.41**," above, and "**Section 6117.42**," above, for the joint use of any sanitary or drainage facilities *acquired* or constructed, or to be acquired or constructed, by another public agency may provide for payment of the agreed compensation by the levy of taxes or special assessments or *from sanitary sewer or drainage rates and charges* (replacing former law's "rentals") if and to the extent that the public agency is authorized by the laws governing it in the acquisition, construction, maintenance, or operation of the facilities to provide for the payment of the costs in respect of which the compensation is due from those sources, and may issue or incur public obligations as provided by those laws and pay the debt charges on those obligations from those sources if and to the extent so authorized.

Section 6117.44

- Replaces the phrase "sewer and other works" with the phrase "sanitary or drainage facilities."
- Slightly modifies continuing law to require a county or other public agency receiving the compensation described under "**Section 6117.42**," above, to credit the amount so received to the proper fund to be used for the *acquisition*, construction, or *operation* and maintenance, as the case may be, of the sanitary or drainage facilities or for other authorized purposes.

Section 6117.45

- Replaces the term "sewer or sewage disposal plant" with the term "sanitary or drainage facility."
- Applies the prohibition against tampering with or damaging any sanitary or drainage facility to a facility *acquired* by a county in addition to, as under continuing law, a facility *constructed* by a county.
- Prohibits any *public agency* from tampering with or damaging any sanitary or drainage facility acquired or constructed by a county under the SDCS Law or any apparatus or accessory connected with it or pertaining to it, from refusing to permit the inspection by the county sanitary engineer of a connection to the facility, and from violating any other provision of SDCS Law, in addition to, as under continuing law, prohibiting any *person* from doing any of the latter.
- Clarifies that fines collected for violations of the SDCS Law (minor misdemeanors carrying a maximum fine of \$100 under sec. 6117.99-- not in the act) must be paid to the county treasurer and credited to the fund that the board determines to be *most appropriate after consideration of the nature and extent of the particular violations*.

Section 6117.49

- Authorizes a board of county commissioners, if it determines by resolution that the best interests of the county and those served by the sanitary or drainage facilities of a county sewer district so require, to sell or otherwise dispose of the facilities to another public agency or person.
- Requires the resolution declaring the necessity of that disposition to recite the reasons for the sale or other disposition and to establish any conditions or terms that the board may impose, including, but not limited to, a minimum sales price if a sale is proposed, a requirement for the submission by bidders of the schedule of rates and charges initially proposed to be paid for the services of the facilities, and other pertinent conditions or terms relating to the sale or other disposition.
- Also requires the resolution to designate a time and place for the hearing of objections to the sale or other disposition by the board of county commissioners.

- Requires notice of the adoption of the resolution and the time and place of the hearing to be published once a week for two consecutive weeks in a newspaper of general circulation in the sewer district and in the county.
- Also requires a copy of the notice to be sent by first class or certified mail, on or before the date of the second newspaper publication, to any public agency within the area served by the facilities.
- Requires the public hearing on the sale or other disposition to be held not less than 24 days following the date of the first newspaper publication of the notice.
- Requires the board of county commissioners, at the public hearing, or at any adjournment of it, of which no further published or mailed notice need be given, to hear all interested parties.
- Requires a period of five days to be given following the completion of the hearing for the filing of written objections by any interested persons or public agencies to the sale or other disposition, after which the board of county commissioners must consider any objections and by resolution determine whether or not to proceed with the sale or other disposition.
- Requires the board of county commissioners, if it determines to proceed with the sale or other disposition, to receive bids after advertising once a week for four consecutive weeks in a newspaper of general circulation in the county, and, subject to the right of the board to reject any or all bids, authorizes the board to make an award to a responsible bidder whose proposal is determined by the board to be in the best interests of the county and those served by the facilities.
- Specifies that a conveyance of sanitary or drainage facilities by a county to a municipal corporation in accordance with the SDCS Law may be made without regard to the provisions described above.

Regional Water and Sewer Districts Law

Continuing law

Election procedure. The Regional Water and Sewer Districts (RWSD) Law permits a board of county commissioners, at any time not less than 75 days before a general election and by a two-thirds vote, to declare by resolution: (1) that the amount of taxes that may be raised within the ten-mill limitation will be



insufficient to provide an adequate amount for the necessary requirements of the county, and (2) that it is necessary to levy a tax in excess of the limitation for the purpose of paying the cost of the preparation of plans, specifications, surveys, soundings, drillings, maps, and other data needed or determined necessary in order to develop plans for the proper purification, filtration, and distribution of water or proper collection and treatment of sewage within the county or a part of the county or beyond the limits of the county, but within the same drainage area as is in part within the county (data). The resolution must be confined to a single purpose and must specify the amount of increase in rate that it is necessary to levy not to exceed 3/10 of a mill, the purpose of the increase, and the number of years during which the increase will be in effect not to exceed five years. (Sec. 6119.31--not in, but referred to in, the act.)

A copy of the resolution must be certified to the board of elections for the county not less than 75 days before the general election in any year. The board of elections then must submit the proposal to the electors of the county at the succeeding general election. If the electors approve the proposal, the board of county commissioners can levy a tax within the county at the additional rate outside the ten-mill limitation. (Sec. 6619.32--not in, but referred to in, the act.)

Alternative procedure. In lieu of following the election procedure to pay the cost of the preparation of data, if a board of county commissioners determines that funds allocated for county general operating expenses are insufficient to pay the operating expenses for the current year and the cost of the preparation of the data, the board can issue *bonds* in an amount not exceeding the total estimated cost of the preparation of the data to defray their expense. The issuance of the bonds or notes in anticipation of the bonds is subject to the UPS Law, except that the maturity of the bonds cannot exceed ten years. The proceeds of bonds, or notes in anticipation of bonds, issued for the purpose of paying the costs of the improvements for which the data are prepared apparently may be applied to the retirement of issued "data" notes. (Sec. 6119.36.)

Changes made by the act

Under the act, in lieu of following the election procedure, a board of county commissioners is permitted to issue *securities*, including anticipatory securities, as defined in the UPS Law (see **COMMENT 1**) for either of the following purposes:

(1) Somewhat similar to continuing law, the purpose of paying the cost of the preparation of the data needed or determined to be necessary or appropriate in order to plan for the proper supply, purification, filtration, and distribution of water, the proper collection, treatment, and *disposal* of sewage, *or the proper collection, control, abatement, or treatment of surface and subsurface drainage* within the limits of the county or a part of the county or beyond the limits of the



county, but within the same drainage area as is in part within the county (the italicized phrases or terms are additions made by the act). The data may include, but are not limited to, plans, specifications, estimates of cost, drillings, maps, soundings, surveys, and tentative assessments against properties that are potentially benefited.

(2) Unlike former law, if the board determines it to be necessary or appropriate, the purpose of paying the costs of acquiring *real estate or interests in real estate* for improvements for one or more of the reasons mentioned in (1) above.¹² (Sec. 6119.36.)

The securities so issued must be in an amount not exceeding the total estimated cost of the preparation of the data and of making any acquisitions of real estate or interests in real estate together with all other items of cost: (1) that are incident to that preparation or those acquisitions, and (2) that are included in the UPS Law's list of costs. The securities are declared to be UPS Law securities ("Chapter 133. securities"), with their issuance being subject to that law except for a maximum maturity not exceeding ten years. Prior to the issuance or the first issuance of the securities, the board of county commissioners is required to determine that the funds allocated for general operating expenses of the county are insufficient to pay both those operating expenses for the current year and the total estimated cost to be financed under the act's provisions. (Sec. 6119.36.)

Finally, the act provides that the proceeds of securities *issued for the purpose of paying costs of improvements* for which the data described above are prepared or for which any acquisition of real estate or interest in real estate described above is made can be applied, without reduction of their maximum maturity, to retire anticipatory securities issued pursuant to the act's provisions (sec. 6119.36).

Revised Code meaning of "county" terms

The act adds rules of construction related to "county" terms in the Revised Code that focus on charter counties. Specifically, unless the context of a section does not permit the following or unless expressly provided otherwise in a section:

- References to particular county officers, boards, commissions, and authorities mean, in the case of a charter county under Article X of the Ohio Constitution, the officer, board, commission, or authority of that county designated by or pursuant to the charter to exercise the same

¹² The term "securities" essentially replaces prior law's "bonds and anticipatory notes" references in this portion of the RWSD Law.

powers or perform the same acts, duties, or functions that are to be exercised or performed under an applicable Revised Code section by officers, boards, commissions, or authorities of counties that have not adopted a charter.

- References to resolutions mean, in the case of a charter county, the appropriate form of legislation permitted by or pursuant to the charter. (Sec. 1.62.)

Other provisions relating to counties and municipal corporations

The act allows a board of county commissioners to lease out for a period of no more than 20 years property that is located in a parking facility built or acquired by the county to serve a building housing county offices and that is not needed for public use (sec. 307.09).

The act prohibits a county, unless provided for by contract between a county and a municipal corporation, from regulating the utility rates of users of a municipal corporation (sec. 307.042). Additionally, the act prohibits a municipal corporation, unless provided for by contract between a county and a municipal corporation, from regulating rates and charges of users imposed by a board of county commissioners under the CWSS Law or the SDCS Law or for any county utility established under any other law of the state (sec. 715.90).

Repair of a public road by a board of township trustees to improve drainage

Continuing law provides that if there is a petition from property owners requesting a township road improvement, the board of township trustees may proceed upon majority vote, and the compensation, damages, and costs of the road improvement must be apportioned and paid by any of the following methods, as set forth in the petition:

(1) Any part of the compensation, damages, and costs must be assessed against all of the following:

(a) The real estate abutting on the improvement;

(b) The real estate situated within one-half mile of either side of the improvement;

(c) The real estate situated within one mile of either side of the improvement, according to the benefits accruing to the real estate.

(2) Any balance of the compensation, damages, and costs must be paid by either of the following:



(a) From the proceeds of any levy for road purposes upon the grand duplicate of all the taxable property in the township;

(b) From any funds in the township treasury available for payment of such compensation, damages, and costs. (Sec. 5573.07.)

If there is no petition from property owners, the board of township trustees may still proceed with a road improvement. Formerly, the board had to act by unanimous vote. Under continuing law, the resolution approving the project must also specify the method of paying for it. Former law provided that the method could be any one of the same methods described above. (Sec. 5571.15.)

The act revises these procedures by providing that if the primary reason for a road improvement is to improve the drainage of water from the road surface and there is no presentation of a petition, the board may proceed upon the passage of a resolution by a *majority* vote. In such a case, however, the cost may be paid either from the proceeds of any levy for road purposes imposed upon all the taxable property in the township or from any funds in the township treasury available for payment of the road project. Assessment of specified property owners is not permitted in this case. (Secs. 5571.15 and 5573.07.)

Application of the act's provisions

Notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding, the act's provisions apply to the following:

- Any proceedings, including proceedings under the UPS Law (see **COMMENT 3**), that on the act's effective date are pending, in progress, or complete and that are supplemented to provide or confirm compliance with or support by the act's provisions as if they had been in effect at the time of those proceedings;
- Public obligations authorized, issued, or incurred pursuant to those proceedings.

Any proceedings pending or in progress on the act's effective date, and public obligations authorized, sold, issued, incurred, delivered, and, if applicable, validated pursuant to those proceedings, must be deemed to have been taken, and authorized, sold, issued, incurred, delivered, and validated, in conformity with the act's provisions (Section 3).

The act's authority is stated to be "additional and supplemental" for subject matter that also may be the subject of other laws and to be "supplemental to and



not in derogation of" any similar authority provided by, derived from, or implied by the Ohio Constitution or any other law, including statutes amended by the act and charters, orders, resolutions, and ordinances. The act further states that no inference can be drawn to negate the authority under the latter listed laws by reason of express provisions contained in the act. (Section 4.)

Additionally, the act specifies that statutes "amended or repealed" by it are deemed to remain applicable to public obligations issued or incurred pursuant to or in reliance on them prior to the act's effective date (Section 3).

The act states that it is the intent of the General Assembly that the amendments made to the CWSS Law and to the SDCS Law by the act are subject to the provisions of Section 4 discussed above. However, the act does not affect the application of the provisions of Section 3 discussed above to those amendments. (Secs. 6103.40 and 6117.60.)

COMMENT

1. The UPS Law defines "public obligations" as both: (1) securities, and (2) obligations of a public issuer to make payments under installment sale, lease, lease purchase, or similar agreements, which obligations bear interest or interest equivalent. It, in turn, generally defines "securities" to mean bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, including, unless the context does not permit, anticipatory securities, issued by an issuer to evidence its obligation to repay money borrowed, or to pay interest, by, or to pay at any future time other money obligations of, the issuer of the securities. "Anticipatory securities" are defined as securities, including notes, issued in anticipation of the issuance of other securities. (Sec. 133.01(B), (GG), and (KK)--not in the act.)

2. The UPS Law defines "current operating expenses" as the lawful expenditures of a subdivision, except those for permanent improvements and for payments of debt charges of the subdivision. It defines "debt charges" as the principal, including any mandatory sinking fund deposits and mandatory redemption payments, interest, and any redemption premium, payable on securities as those payments come due and are payable. That law generally defines a "permanent improvement" as any property, asset, or improvement certified by the fiscal officer (the certification being conclusive) as having an estimated life or period of usefulness of five years or more; a permanent improvement for parking, highway, road, and street purposes includes resurfacing, but does not include ordinary repair. Finally, the UPS Law defines a "subdivision" as any of the following: a county, including a charter county; a municipal corporation, including a charter municipal corporation; a school district; a regional



water and sewer district; a joint township hospital district; a joint ambulance district; a joint recreation district; a detention home district or a combined district; a township police district; a township; a joint fire district; a county library district or a regional library district; a joint solid waste management district; a joint emergency medical services district; a fire and ambulance district; and any other political subdivision or taxing district or other local public body or agency authorized by the UPS Law or other laws to issue Chapter 133. securities. (Sec. 133.01(I), (J), (CC), and (MM)--not in the act.)

3. The UPS Law defines "proceedings" to mean the legislation, certifications, notices, orders, sale proceedings, trust agreement or indenture, mortgage, lease, lease-purchase agreement, assignment, credit enhancement facility agreements, and other agreements, instruments, and documents, as amended and supplemented, and any election proceedings, authorizing, or providing for the terms and conditions applicable to, or providing for the security or sale or award of, public obligations. The definition also includes the provisions set forth or incorporated in those public obligations and proceedings. (Sec. 133.01(EE)--not in the act.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-18-00	p. 1519
Reported, H. Transportation & Public Safety	05-03-00	pp. 1888-1889
Passed House (95-1)	05-23-00	pp. 2027-2028
Reported, S. Energy, Natural Resources, & Environment	11-15-00	pp. 2225-2226
Passed Senate (32-0)	11-15-00	p. 2237
House concurred in Senate amendments (91-0)	11-16-00	pp. 2373-2374

00-hb549.123/kl



APPENDIX

Subject	County Water Supply System Law location	Sewer Districts and County Sewers Law location
Definitions	6103.01	6117.01
Purposes; fixing of rates; assessments	6103.02	6117.01 and 6117.02
Authority of board of county commissioners	6103.03	6117.04
Jurisdiction of board of county commissioners	6103.04	6117.05
General plans	6103.05	6117.06
Sale of bonds to fund improvements	6103.07	6117.08
Construction of improvements; assessments and appeals	6103.081	6117.251
Petition by property owners who will be assessed to pay for a project	6103.11	6117.28
Incidental costs and expenses	6103.12	6117.29
Assessments of costs of projects	6103.13	6117.30
Revised assessments for property owners	6103.15	6117.32
Director of the EPA may order improvements	6103.17	6117.34
Contracts to supply services	6103.20	6117.38
Contracts between counties and municipal corporations	6103.21	6117.41
Contract provisions	6103.22	6117.42
Methods of funding payments by counties and municipal corporations	6103.23	6117.43
Crediting of moneys to the proper fund	6103.24	6117.44
Appropriation or purchase of property	6103.25	6117.39
Prohibitions	6103.29	6117.45
Sale of facilities	6103.31	6117.49

