Bill Analysis

Jill Rowland *Legislative Service Commission*

H.B. 617

123rd General Assembly
(As Introduced)

Reps. Mottley, Netzley, Britton, Allen, Jolivette, Grendell, Schuler

BILL SUMMARY

Bonds

- Eliminates certain requirements and other provisions regarding the issuance of anticipatory bonds by a conservancy district's board of directors.
- Requires the board of directors of a conservancy district, prior to and in anticipation of the issuance and sale of bonds, to adopt a note resolution.
- Establishes more detailed requirements regarding the bonding resolution that current law requires the board of directors of a conservancy district to adopt under certain circumstances.
- Authorizes the board of directors of a conservancy district to issue anticipatory notes or bonds to fund or refund previously issued notes or bonds and requires moneys derived from the proceeds of the notes and bonds to be placed in an escrow fund until they are sufficient to pay the debt charges on the previously issued notes or bonds.
- Replaces detailed current law governing procedures for the sale of bonds by a conservancy district with the requirement that bonds be sold by competitive bid or at private sale.
- Makes other changes regarding bonds issued by a conservancy district.

Deposit of district moneys

- Eliminates detailed current law provisions governing the deposit of a conservancy district's moneys and instead requires the district's moneys to be deposited in accordance with the state Uniform Depository Act.

Record keeping

- Makes numerous changes necessary to facilitate computerized, paperless record keeping by a conservancy district and changes other record keeping requirements.

Taxes and assessments

- Replaces references in the Conservancy District Law to "taxes" with references to "assessments."

- Eliminates a conservancy district's authority to levy taxes on all taxable property in the district to pay for construction and maintenance of recreational facilities.

- Establishes that an annual maintenance assessment collected by a conservancy district must not be less than $2.

- Eliminates a conservancy district's authority to collect any annual maintenance assessments that are under $10 biennially or triennially rather than annually.

- Reduces from eight to six years the interval at which a readjustment of an appraisal of benefits may be made for the purpose of making a more equitable basis for a conservancy district's levy of the annual maintenance assessment.

Notice requirements

- For purposes of provisions that require notice of certain information regarding a conservancy district's activities to be published, reduces the number of times that the notice must be published from once a week for three consecutive weeks in two newspapers to once in one newspaper.

- Makes changes regarding notice that must be published regarding the report of the board of appraisers of a conservancy district.

Other provisions

- Eliminates a provision stating that if proposed alterations or additions to a conservancy district's official plan do not increase the cost more than 10%, no action other than a resolution of the board of directors of the conservancy district is necessary for the approval of the alterations or additions.

- States that nothing in the statute providing a remedy to a person injuriously affected by the officials or plan of a conservancy district can be construed as expressly imposing any liability on a conservancy district.

- Make numerous technical changes.

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CONTENT AND OPERATION

Background concerning the Conservancy District Law

Under current law, any area situated in one or more counties is permitted to be organized as a conservancy district for any of the following purposes: (1) preventing floods, (2) regulating stream channels by changing, widening, and deepening them, (3) reclaiming or filling wet and overflowed lands, (4) providing for irrigation when needed, (5) regulating the flow of streams and conserving their waters, (6) diverting or in whole or in part eliminating watercourses, (7) providing a water supply for domestic, industrial, and public use, (8) providing for the collection and disposal of sewage and other liquid wastes produced within the district, and (9) arresting erosion along the shoreline of Lake Erie. (Sec. 6101.04.)

A conservancy district is established through a petition process that is administered by the court of common pleas of one of the counties containing territory within the proposed district (sec. 6101.05, not in the bill). After fulfillment of all of the statutorily required steps, approval by the court, and incorporation of the conservancy district, the court appoints a board of directors to govern the affairs of the district (secs. 6101.07, 6101.08, 6101.09 (not in the bill), and 6101.10 (not in the bill)). The board of directors must prepare an official plan outlining the improvements necessary to carry out the purposes for which the conservancy district was created (sec. 6101.13). The court also must appoint a board of appraisers to appraise the benefits and damages accruing to all lands under the district's official plan (sec. 6101.27, not in the bill).

In order to accomplish the purposes of the conservancy district, the board of directors is provided with broad powers (sec. 6101.15 and Chapter 6101. in general). In addition to those broad powers, the board is authorized to levy assessments, impose rates for the sale of water, issue anticipatory notes and bonds, and issue revenue bonds for the district's purposes (secs. 6101.44 through 6101.64).

Bonds

Issuance of bonds in anticipation of collection of an assessment and related anticipatory notes

Authority to issue bonds. Current law allows the board of directors of a conservancy district, if in the board's judgment it seems best, to issue bonds in an amount not to exceed 90% of the total amount of the unpaid portion of an assessment, exclusive of interest, levied under the Conservancy District Law, in denominations of not less than $100, bearing interest from the date of issuance at a rate not to exceed the maximum rate prescribed in accordance with law, payable semiannually, to mature at annual or semiannual intervals within 30 years, commencing not later than five years, to be determined by the board. (Sec.

6101.50(A).) The bill eliminates the requirements that bonds must be issued in denominations of not less than $100, that the interest rate may not exceed the maximum rate prescribed in accordance with current law, that the bonds be payable semiannually, and that the bonds mature at intervals commencing not later than five years from their issuance (secs. 6101.50(A) and 6101.84(C)). The bill also eliminates current law that requires both the principal and interest to be payable at the office of the Treasurer of State (secs. 6101.50(A) and 6101.84(D)).

Resolution of necessity and note resolution. Current law requires the board of directors of a conservancy district, whenever the board determines to issue bonds in anticipation of the collection of the installments of an assessment, to adopt a resolution, known as the resolution of necessity, declaring the necessity of the bond issue, its purpose, and the amount. The bill eliminates current law authorizing the board, after adoption of the resolution of necessity, from time to time, prior to and in anticipation of the issuance and sale of those bonds, to borrow money and issue notes for it in an aggregate amount not in excess of the amount of the bond issue, bearing interest at a rate not in excess of the maximum rate established in accordance with current law, payable semiannually or at maturity if less than six months. Instead, the bill requires the board, after adoption of the resolution of necessity and prior to and in anticipation of the issuance and sale of those bonds, to adopt a resolution known as the note resolution. The bill requires the note resolution to do all of the following:

(1) State the principal amount or maximum principal amount of anticipatory notes to be issued and outstanding, not to exceed the amount of the bond issue;

(2) Provide for, or provide the method for, establishing or determining from time to time the rate or rates of interest or the maximum rate or rates of interest to be paid on the anticipatory notes;

(3) State the date or dates of the anticipatory notes;

(4) Establish provisions, if any, for redemption or prepayment of the anticipatory notes, in whole or in part, before maturity; and

(5) Provide the maturity date of the anticipatory notes, which must be not later than five years from the date of the first issue of the notes. (Sec. 6101.50(A).)

Miscellaneous anticipatory note provisions eliminated by the bill. The bill eliminates current law stating that anticipatory notes are redeemable at any interest payment date. The bill also eliminates current law allowing the notes to be sold at private sale, but prohibiting them from being sold at less than par and accrued interest and stating that if the board of directors determines to sell the notes at public sale, the procedure must be as provided for the sale of bonds. In addition, the bill eliminates a requirement that each determination of the board to borrow money and issue notes be evidenced by a resolution of the board. (Sec. 6101.50(B).)

Bonding resolution. Current law requires the board of directors of a conservancy district, if the board determines not to issue anticipatory notes or if the anticipatory notes are issued and are about to fall due, to adopt a resolution known as the bonding resolution. Under current law retained by the bill, the bonding resolution must declare the necessity of the bonds presently to be issued, their purpose, and their amount, in accordance with the prior resolution of necessity. The bill replaces current law requiring the bond resolution to fix the date, rate of interest, and maturity of the bonds with more detailed provisions. Under the bill, the bonding resolution must do all of the following:

(1) State or provide for the date of the bonds, and the dates and amounts or maximum amounts of maturities or principal payments on the bonds;

(2) State any provision for a mandatory sinking fund or mandatory sinking fund redemption or for redemption prior to maturity;

(3) Provide for the rate or rates of interest or maximum rate or rates of interest to be paid on the bonds or, if otherwise authorized, the method for establishing or determining from time to time the rate or rates of interest to be paid on the bonds; and

(4) State any provision for a designated officer of the district to determine any of the specific terms required to be stated in the bonding resolution, subject to any limitations stated in the bonding resolution. (Sec. 6101.50(C)(1).)

The bill retains current law that specifies that when anticipatory notes are not issued, the resolution of necessity may be incorporated in and made a part of the bonding resolution (sec. 6101.50(C)(2)).

Escrow fund and issuance of anticipatory notes or bonds to fund or refund previously issued notes or bonds. The bill authorizes the board to issue anticipatory notes or bonds to fund or refund previously issued notes or bonds. The anticipatory notes or bonds must be issued pursuant to a note resolution or bonding resolution. Moneys derived from the proceeds of anticipatory notes and bonds and any moneys derived from other sources and required for the funding or refunding of the previously issued notes or bonds must be placed, under an escrow agreement or otherwise and to the extent required by the resolution, in an escrow fund. The escrow fund may be an account in the bond retirement fund if the previously issued notes or bonds are payable within 90 days of the issuance of the anticipatory notes or bonds. The moneys in the escrow fund must be pledged and used for the purpose of funding or refunding the previously issued notes or bonds. (Sec. 6101.50(E).)

The bill specifies that pending their use as described above, the moneys in the escrow fund must be invested in direct obligations of, or obligations guaranteed as to payment by, the United States that mature, or are subject to redemption by and at the option of the holder, not later than the date or dates when the moneys in the escrow fund, together with interest or other investment income accrued on those moneys, are required for the payment of debt charges on the previously issued notes or bonds. Any moneys in the escrow fund that are not needed for the payment of debt charges on the previously issued notes or bonds must be transferred to the bond retirement fund. For these purposes, "direct obligations of, or obligations guaranteed as to payment by, the United States" includes rights to receive payment or portions of payments on the principal of, or interest or other investment income on, those obligations and other obligations fully secured as to payment by those obligations and the interest or other investment income on those obligations. (Sec. 6101.50(F).)

The bill specifies that when the moneys, including the interest or other investment income on the moneys, in the escrow fund are determined by an independent public accounting firm to be sufficient for the payment of the debt charges on the previously issued notes or bonds, the following conditions apply:

(1) The previously issued notes or bonds no longer are permitted to be considered outstanding;

(2) The previously issued notes or bonds no longer are permitted to be considered for purposes of determining any direct or indirect limitation on the indebtedness or net indebtedness of the district; and

(3) The levy of special assessments or other charges for the payment of debt charges on the previously issued notes or bonds under the Conservancy District Law, the Tax Levy Law, or other provisions of state law is not required. (Sec. 6101.50(G).)

Miscellaneous requirements. The bill retains current law requiring bonds and anticipatory notes to be signed by the president of the board and attested by the seal of the district and by the signature of the secretary of the district. However, the bill eliminates current law requiring the bonds to be registered by the Treasurer of State and specifying that interest coupons attached to the bonds must bear the facsimile signatures of the president and secretary of the board. (Sec. 6101.50(D)(3).) The bill also eliminates a provision requiring all bonds and coupons not paid at maturity to bear interest at a rate not to exceed the maximum rate determined in accordance with procedures established under current law from maturity until paid or until sufficient funds have been deposited at the place of payment. In addition, the bill eliminates current law requiring reasonable compensation to the Treasurer of State with the costs to the office of the Treasurer for registering and paying bonds and interest on them to be paid out of the other funds in the hands of the treasurer of the conservancy district and collected for the purpose of meeting the expenses of administration. Similarly, the bill eliminates current law requiring that portion of the funds paid to the Treasurer of State that represents the costs to his office to be paid into the state treasury to the credit of the General Revenue Fund. (Sec. 6101.50 (D)(3).)

Sale of bonds

Current bond sale procedures eliminated by the bill. The bill eliminates and replaces current law governing the procedures for selling bonds that are issued by a conservancy district. The bond sale procedures apply to both the sale of bonds issued in anticipation of the collection of the installments of an assessment and to the sale of revenue bonds. (Secs. 6101.50 and 6101.501.) This eliminated current law requires all bonds to be sold to the highest bidder, after being advertised once a week for three consecutive weeks and on the same day of the week, the first advertisement being published at least 21 full days before the date of sale, in a newspaper having general circulation in the county in which the office of the district is located. The eliminated current law requires the advertisement to state the amount of the bonds to be sold, how long they are to run, the rate of interest to be paid on them, the dates of payment of interest, the purpose of the issue, and the day, hour, and place where bids will be received. Such current law also allows an advertisement to be published in recognized financial journals. Under the eliminated current law, anyone desiring to do so may present a bid for the bonds based upon their bearing a different rate of interest than specified in the advertisement. The bill also eliminates language stating that where a fractional interest rate is bid, the fraction must be 1/4 of 1% or a multiple thereof and uniform for all maturities. In addition, the bill eliminates current law requiring every bidder to file with his bid a bond or certified check in an amount specified in the advertisement, but not less than 1% of the amount of the bonds to be sold. (Sec. 6101.50(C)(2).)

Current law that also is eliminated by the bill allows bonds of the district to be issued subject to call or redemption prior to maturity at not more than par. The bill eliminates a related provision specifying that when the district has issued bonds subject to call or redemption prior to maturity, the board may refund the bonds at a lower rate of interest than is provided in them, provided that the bonds issued must not exceed in amount the bonds refunded and the maturity of the bonds so issued must not extend beyond the maturity of the bonds refunded. (Sec. 6101.50(C)(2).)

Under current law eliminated by the bill, bonds are prohibited from being sold for less than their face value with accrued interest. The eliminated current law requires the board of directors to accept the highest bid, or, if bids are received based on a different rate of interest than specified in the advertisement, the board must accept the highest bid resulting in the lowest net interest cost to the district, presented by a responsible bidder. The net interest cost is the difference between the interest cost over the life of the bonds and the premium offered. The eliminated language states that if a bid is accepted based upon a rate of interest other than that provided for in the bonding resolution of the board, the acceptance before taking effect must be approved by a supplemental resolution of the board, and in such case bonds may be issued bearing the rate of interest provided for in the accepted bid without further amendment of the bonding resolution. The bill eliminates language stating that when bonds have been once advertised and offered at a public sale, as provided by law, and they or any part of them remain unsold for want of bidders, those unsold may be sold at a private sale at not less than their par value and accrued interest on them bearing not to exceed the rate of interest provided in the bonding resolution of the board. (Sec. 6101.50(C)(2).)

The bill's new bond sale procedures. In place of the above current law requirements governing the sale of bonds, the bill authorizes anticipatory notes and bonds to be sold by competitive bid or at private sale in a manner determined or authorized by the board, but they are prohibited from being sold for less than 97% of their principal amount, plus accrued interest (private sale also is authorized under current law). (Sec. 6101.50(D)(1).) The bill defines "bid" as the terms "bid" or "proposal" are used in the Uniform Public Securities Law (secs. 133.30(C), not in the bill, and 6101.50(D)(1)). The bill retains current law requiring all moneys from the premiums and accrued interest to be paid into the bond retirement fund (sec. 6101.50(D)(2)).

Elimination of statement that bonds are negotiable paper

The bill eliminates current law stating that bonds issued by a conservancy district under the Conservancy District Law have all the qualities of negotiable paper under the law merchant and stating that when executed and sealed and registered in the office of the Treasurer of State in conformance with that law and when sold in the manner prescribed in that law, the bonds are not invalid for any irregularity or defect in the proceedings for their issuance and sale and are incontestable in the hands of bona fide purchasers or holders of the bonds for value. It retains current law stating that when consideration for bonds is received by a district, the bonds are not so invalid and are so incontestable. (Sec. 6101.51.)

Deposit of district moneys

Moneys deposited to provide for the payment of bonds

The bill eliminates current law that requires all moneys of a conservancy district that are deposited with the Treasurer of State to provide for the payment of bonds and interest to be deposited by the Treasurer of State in the name of the district in a national or state bank subject to the same conditions that are provided by law for the deposit of moneys of the state. The bill also eliminates current law requiring all interest received on the deposit to be paid to the district. (Sec. 6101.51.)

Deposit of the district's money in general

The bill eliminates detailed current law provisions governing deposit of district moneys and instead requires moneys derived from the sale of bonds and from all other sources to be deposited by the district's treasurer in accordance with the portion of the state Uniform Depository Act that governs public depositories. The eliminated current law is described below. (Sec. 6101.51.)

Selection of depositories. The bill eliminates current law requiring moneys derived from the sale of bonds and from all other sources to be deposited by the treasurer of the district with depositories designated by the board of directors. Under the eliminated law, at intervals of not greater than two years, the board must invite proposals from banks and trust companies for the deposit of district funds. So long as such banks and trust companies are permitted by law to pay interest, the board must select as depositories the bank or banks or trust company or companies that at competitive bidding offer the highest rate or rates of interest, but if no proposal offering depository interest is received, the board may designate depositories for the funds of the district without payment of interest. Under the eliminated law, the selection of any depository must be evidenced by a resolution of the board, which must set forth the terms governing the selection. (Sec. 6101.51.)

Hypothecation of securities. Current law eliminated by the bill requires a conservancy district's deposited funds to be protected at all times by the hypothecation by the depository of securities of market value or par value, whichever is less, in an amount equal to 100% of the funds and also requires additional securities to be hypothecated when necessary to maintain that percentage.[1] Under the eliminated language, the hypothecation of the securities by

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[1] Merriam Webster's Collegiate Dictionary, Tenth Edition *states that "hypothecate" means to pledge as security without delivery of title or possession.*

the depository does not require that the securities be placed in the possession of the treasurer of the district. (Sec. 6101.51.)

Designation of trustee. Current law eliminated by the bill authorizes the depository, by written notice to the board of directors and to the treasurer of the conservancy district, to designate a qualified trustee and deposit the eligible securities with the trustee for safekeeping for the account of the treasurer and the depository, as their respective rights to and interests in the securities may appear and be asserted by written notice to or demand upon the trustee. In that case, the eliminated language requires the treasurer to accept the written receipt of the trustee describing the securities, as and for a hypothecation of the described securities, and issue to the depository his written acknowledgment to that effect, keeping a copy of the acknowledgment in his office. Upon the acknowledgment, the securities described in the trustee's receipt must be deemed to have been hypothecated with the treasurer and to have been deposited with him. (Sec. 6101.51.)

Additional provisions. Under current law eliminated by the bill, the amount of the securities to be hypothecated must be reduced by an amount equal to the insurance of deposits provided by the Federal Deposit Insurance Corporation under federal banking law. The eliminated language states that the securities are obligations of, or guaranteed as to principal and interest by, the United States or obligations of the state or of the conservancy district or, subject to acceptance by the board of directors, obligations of any political subdivision lying wholly or partly within the boundaries of the district. The eliminated language allows the amount of the hypothecated securities to be reduced, from time to time as the amount on deposit is reduced, but the total protection of deposits must be not less than the amount on deposit. The language eliminated by the bill allows the board to invest moneys of the district in United States savings bonds or other interest bearing obligations of the United States. (Sec. 6101.51.)

Record keeping requirements

Updates necessary to facilitate computerized, paperless record keeping

The bill makes numerous changes to the existing Conservancy District Law in order to facilitate computerized, paperless record keeping. For example, the bill eliminates various current law provisions requiring a conservancy district's records to be bound, kept in a book, arranged in a tabular form, prepared in duplicate, endorsed, or arranged in columns. Accordingly, with respect to record keeping requirements, the bill replaces the terms "book" and "report" with the term "record." (Secs. 6101.02(B), 6101.11, 6101.31, 6101.33, 6101.48, 6101.49, 6101.52, 6101.55, 6101.57, 6101.58, 6101.59, 6101.60, and 6101.84(G)(2) and (H)(2).)

Certification of record of registered bonds to Treasurer of State

Under current law, whenever the owner of a coupon bond issued under the Conservancy District Law presents the bond to the treasurer of the issuing conservancy district and requests that the bond be registered, the treasurer must register the bond as to principal and interest in the name of the owner. Upon registration, the principal and interest of the bond are payable to the registered owner. The bill retains these requirements, but eliminates current law requiring the treasurer of a conservancy district, not more than 30 nor less than 15 days prior to each payment date for payment of principal or interest on registered bonds, to certify the record of registered bonds to the Treasurer of State. (Sec. 6101.52.)

Deadline for recording annual assessment levy

Current law requires the board of directors of a conservancy district to determine, order, and levy an annual levy each year after the original assessment has been levied. The annual levy must include all assessments, or installments of assessments, together with interest, levied under the Conservancy District Law that become due in the ensuing year. Under current law, the annual levy must be recorded in the conservancy assessment record, must be signed and certified by the president of the board and by the secretary of the conservancy district, and must be attested by the seal of the district, not later than July 1 each year. The bill changes this deadline from July 1 to September 1. (Sec. 6101.55.)

Taxes and assessments

Replacement of term "tax" with term "assessment"

Under current law, conservancy districts may levy assessments on real property and on political subdivisions upon which benefits have been appraised in order to pay the costs of executing the district's plan. The assessment must be apportioned to and levied on each tract of land or other property and each political subdivision in the district in proportion to the benefits appraised, and not in excess. (Sec. 6101.48.) The Conservancy District Law makes reference in various provisions to this authority to levy assessments, and numerous provisions also refer to the district's authority to levy taxes or to levy "taxes and assessments." The bill eliminates the references to "taxes" and instead refers only to "assessments."[2] (Secs. 6101.41, 6101.44, 6101.51, 6101.57, 6101.59, 6101.60, 6101.61, 6101.65, 6101.71, and 6101.73.)

Elimination of authority to levy taxes on all taxable property to pay for construction and maintenance of recreational facilities

Current law authorizes the board of directors of a conservancy district to construct, improve, operate, maintain, and protect parks, parkways, forest preserves, bathing beaches, playgrounds, and other recreational facilities. If the revenues derived or to be derived from the recreational properties, improvements, and facilities are not sufficient, current law authorizes the board, with the approval of the judges who appointed the board members, to provide for the payment of obligations incurred in connection with the recreational facilities by either or both of the following: (1) the levy of taxes on all the taxable property of the district, or (2) the levy of special assessments on public corporations having lands within the district.[3] The bill eliminates the authority to levy taxes on all of the taxable property of the district. (Sec. 6101.25(A) and (B).)

Accordingly, the bill eliminates language stating that if the judges approve the authority to levy taxes on all taxable property to pay for obligations incurred in connection with recreational facilities, the board may levy in any year taxes of not to exceed one tenth of one mill on the taxable real and personal property of the district, and in anticipation of the collection of the taxes, the board may issue bonds and notes for the acquisition and construction of the properties and improvements. The bill also eliminates language requiring the bonds and notes to be issued in the manner provided for the issuance of other bonds and notes under the Conservancy District Law. (Sec. 6101.25.)

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[2] *It is unclear whether the elimination of the term "tax" is a substantive change or a mere clarification.* Black's Law Dictionary *makes a distinction between an assessment and a tax. An assessment usually is valid only where the property assessed receives some special benefit differing from the benefit that the general public enjoys whereas a tax usually is levied for the support of government and for all public needs. Since a conservancy district generally only has the authority to levy taxes or assessments on benefited properties, it is possible that elimination of the term "tax" and use of the term "assessment" is a mere clarification.*

[3] *Current law defines "public corporation" as counties, townships, municipal corporations, school districts, road districts, ditch districts, park districts, levee districts, and all other governmental agencies clothed with the power of levying general or special taxes (sec. 6101.01(C)).*

Annual maintenance assessment

To maintain, operate, and preserve the reservoirs, ditches, drains, dams, levies, canals, sewers, pumping stations, treatment and disposal works, or other properties or improvements acquired or made pursuant to the Conservancy District Law, and to strengthen, repair, and restore them when needed, and to defray the current expenses of a conservancy district, current law authorizes the board of directors of the conservancy district, upon the substantial completion of the improvements and on or before September 1 of each year thereafter, to levy a conservancy maintenance assessment on each tract or parcel of land and on each public corporation within the district. Under current law, the maintenance assessment must be apportioned on the basis of the total appraisal of benefits accruing for original and subsequent construction and must not exceed 1% of the total appraisal of benefits in any one year unless the judges who appointed the board of directors of the district by order authorize an assessment of a larger percentage. (Sec. 6101.53.) The bill adds that the maintenance assessment must not be less than $2 (secs. 6101.53 and 6101.54).

The bill eliminates current law authorizing the board of directors of a conservancy district to adopt a resolution requiring that any annual maintenance assessments that are for $10 or less be collected biennially or triennially rather than annually. The bill likewise eliminates a requirement that the resolution must specify the maximum dollar amount, not to exceed $10 for each year for which the collection is being made, that may be accumulated and collected either biennially or triennially, whichever is indicated in the resolution. In addition, the bill eliminates language requiring the board annually to certify to the county auditor the amount of such assessments to be collected in that year, if any, and requiring the county auditor to proceed to collect those certified amounts in the same manner as provided for collection of all other maintenance assessments. (Sec. 6101.53.)

Under certain circumstances, current law authorizes a petition to be filed with the clerk of court stating that there has been a material change in the values of the property in a conservancy district or additional benefits are being derived from the works and the improvements of the district since the last previous appraisal of benefits and praying for a readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the annual maintenance assessment. Current law prohibits a readjustment of benefits more often than once in eight years. The bill reduces this time period by prohibiting a readjustment of benefits more often than once in six years. (Sec. 6101.54.)

Notice

Definition of "publication"

The Conservancy District Law includes several provisions requiring notice of certain information to be given by publication. For example, upon completion of the conservancy district's plan, the board of directors of the conservancy district must give notice of the completion by publication (sec. 6101.13). The bill reduces the number of times that information must be published in order to constitute adequate notice. (Secs. 6101.01(A), 6101.13, 6101.16, and 6101.30.)

Under current law, "publication" means once a week for three consecutive weeks in each of two newspapers of different political affiliations, if there are such newspapers, and of general circulation in the counties in which the publication is to be made. The bill instead specifies that "publication" or "published" means once in a newspaper of general circulation in the counties where the publication is to be made. In addition, the bill eliminates current law that specifies that the publication need not be made on the same day of the week in each of the three weeks and that states that not less than 14 days, excluding the day of the publication, must intervene between the first publication and the last publication. The bill also eliminates current law stating that publication is complete on the date of the last publication. (Sec. 6101.01(A).)

Notice of board of appraisers report

Current law requires the clerk of court, upon the filing of the report of the board of appraisers of a conservancy district, to give notice of the filing by publication. The bill retains this requirement, but eliminates current law that requires the notice specifically to designate the name of each known party whose tax mailing or other address cannot be ascertained as disclosed by an affidavit described below and that specifies that the name of any such party need be designated only in the publication made in the county or counties in which lands, or interests in lands, owned by the party and affected by the report are located. (Sec. 6101.32.)

Current law requires the secretary of the conservancy district or the secretary's deputy to prepare and file with the clerk of court on or before the date of the first publication of the notice of the board of appraisers report an affidavit attesting in substance that, as of that date, the affiant has determined that the names of all public corporations and the names of the owners of all property affected by the report, together with their respective tax mailing or other known addresses where ascertainable, are listed in the report with the exception of differing names or addresses specifically set forth in the affidavit. The bill requires the affidavit to attest that the affiant has determined the names of all applicable public corporations and the names of the owners of property that is to be taken or that is damaged are listed in the report rather than the names of all public corporations and the names of the owners of all property affected by the report of the board of appraisers. (Sec. 6101.32.)

Current law also requires the affidavit to attest that notices have been mailed as discussed below to each public corporation and to each owner of property having a tax mailing or other known address as shown by such affidavit and to all other persons having an interest of record in property that is to be taken or that is damaged and whose interest is known or can be ascertained from the record. The bill eliminates the language regarding notices having been mailed to each owner of property having a tax mailing or other known address as shown by the report or affidavit. (Sec. 6101.32.)

Publication of landowners' names

Current law states that it is not necessary in any notice required to be published under the Conservancy District Law to specify the names of the owners of the lands or of the persons interested in the lands, except as otherwise provided under current law governing the publication of notice of a board of appraisers report that is described above. The bill eliminates the exception. (Sec. 6101.03(E).)

Alteration or addition to conservancy district's official plan

Current law authorizes the board of directors of a conservancy district, at any time after the conservancy appraisal record is filed, to alter or add to the official plan by amendment when necessary to fulfill the objectives for which the district was created. Under current law, if the alterations or additions, in the judgment of the judges who appoint the members of the district's board of directors, neither materially modify the general character of the work, nor materially increase resulting damage for which the board is not able to make amicable settlement, nor increase the cost more than 10%, no action other than a resolution of the board is necessary for the approval of the alterations or additions. Otherwise, the board of appraisers of the district must appraise the property to be taken, benefited, or damaged by the proposed alterations or additions. The bill eliminates the provision establishing that one of the factors that determines that no action other than a resolution of the board is necessary for the approval of the alterations or additions is that the alterations or additions do not increase the cost more than 10%. (Sec. 6101.39.)

Clarification regarding liability of conservancy district

Current law provides a remedy, if no other method of relief is offered under the Conservancy District Law, for any person or public corporation, within or without any conservancy district, that considers itself injuriously affected in any manner by any act performed by any official or agent of the district or by the execution, maintenance, or operation of the official plan for the district (sec. 6101.74). The bill specifies that nothing in the provisions establishing the remedy can be construed as expressly imposing any liability upon a conservancy district (sec. 6101.74(B)).

Technical changes

The bill makes numerous technical changes such as replacing references to "sections 6101.01 to 6101.84, inclusive, of the Revised Code" with references to the more accurate and concise "this chapter," replacing the outdated and no longer accurate term "special master commissioner" with the updated, accurate term "magistrate," making the bill's language gender neutral, and eliminating outdated language that failed to apply after 1965 (sec. 5511.04 and Chapter 6101.).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-22-00	p. 1705

H0617-I.123/nlr