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*Final Analysis*  
Legislative Service Commission

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**Sens. Mumper, Austria, White, Roberts**

**Reps. Aslanides, Gibbs, C. Evans, Niehaus, Schlichter, Widener**

**Effective date:** \*

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**ACT SUMMARY**

**Meat and poultry slaughtering and processing establishments**

- Establishes parallel compliance requirements governing meat slaughtering and processing establishments (meat establishments) and poultry slaughtering and processing establishments (poultry establishments) that wish to receive a license to operate, and authorizes an applicant who is denied a license to appeal the denial.
- Adds that a license for either a meat or poultry establishment can only be renewed if the Director of Agriculture finds that the establishment is in compliance with the Meat and Poultry Inspection Law and rules adopted under it.
- Allows the Director to impose progressive enforcement actions for a continuing violation by a meat or a poultry establishment of the Meat and Poultry Inspection Law or rules adopted under it.
- Authorizes the Director to condemn or retain product on hand and immediately withdraw inspection prior to an adjudication hearing until specified conditions at a meat establishment are corrected, and requires the Director subsequently to afford a hearing upon the request of the owner or operator of the establishment.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Allows the Director to immediately withdraw inspection from a meat or poultry establishment prior to an adjudication hearing if he determines that the owner or operator or an employee of the establishment forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with any person while that person was performing his duties under applicable provisions of the Meat and Poultry Inspection Law or rules adopted under them.
- Authorizes the Director to apply for an injunction or other appropriate relief concerning a violation of the Meat and Poultry Inspection Law or the rules adopted under it.
- Authorizes, rather than requires, an inspector of either a meat or poultry establishment to notify the applicable licensee of a violation, and adds withdrawal of inspection to an inspector's authorized progressive enforcement actions.
- Prohibits a person from offering for sale meat or meat products that have not been inspected in compliance with the meat establishment provisions of the Meat and Poultry Inspection Law.
- Revises the definition of "retail dealer" or "retail butcher."

**Dairies Law revisions**

- Expands the definitions of grade A milk processor and manufacture milk processor to include transfer stations, receiving stations, and milk transport cleaning facilities, thereby requiring those entities to comply with the statutes governing grade A milk processors and manufacture milk processors.
- Requires licensed weighers, samplers, and testers to meet continuing education requirements, and requires the Director to adopt rules establishing requirements for continuing education courses and to review and grant approval to courses that meet the requirements.
- Changes the expiration date of a temporary weigher, sampler, or tester license from the date of the next licensing examination to 90 days from the date of issuance, and eliminates requirements governing the issuance of a temporary weigher, sampler, or tester license to a previously licensed person.

- Authorizes, rather than requires, the Milk Sanitation Board to prescribe inspection fees for milk producers.
- Requires an adjudicatory hearing that is requested by a person licensed under the Dairies Law to be held at the central office of the Department of Agriculture rather than at the county seat of the county in which is located the licensee's facility that is involved in the alleged violation.
- Specifies that milk transport vehicles, rather than vehicles and containers used by milk haulers, are subject to inspection.

**Claims for indemnification for livestock injured or killed by coyotes or black vultures**

- Revises the procedures and requirements governing the filing of a claim for indemnification for the injury or death of livestock caused by coyotes or black vultures, including revising the time when the livestock's owner may file a claim and defining "fair market value" rather than having the owner include the fair market value of the livestock in the claim and a dog warden certify that value.
- Modifies the responsibilities of dog wardens and wildlife officers in investigating claims filed by owners.
- Requires claims to be filed directly with the Department of Agriculture, requires the Department to hear claims that are approved by a dog warden and supported by a wildlife officer, requires the Director to determine an animal's fair market value as defined by the act, and allows the owner of an animal to appeal the Department's determination of that value.
- Requires claims to be paid from money appropriated for that purpose from the General Revenue Fund rather than from the Agro Ohio Fund, and requires the Department to disapprove claims if insufficient funds are available from that money.
- Requires the Director of Agriculture to adopt rules to administer the livestock indemnification program, including rules that establish requirements governing voluntary animal control plans.

### *Pesticides Law revisions*

- Modifies the list of publicly accessible sites at which an owner of a business other than a pesticide business or an employee of such an owner is prohibited from applying pesticides without a commercial applicator license by eliminating wholesale food establishments from the list, adding food processing establishments and colleges to the list, and including on the list only food service operations and retail food establishments that must be licensed rather than all such operations and establishments.
- Limits the exemption for employees of the Department of Agriculture from payment of the license or renewal fee for a commercial applicator license only to such employees whose job duties require licensure as a commercial applicator as a condition of employment.
- Authorizes the Director of Agriculture, in response to certain violations, after providing the opportunity for a hearing, to deny, suspend, revoke, refuse to renew, or modify any provision of any license, permit, or registration issued under the Pesticides Law.

### *Agricultural easements*

- Authorizes soil and water conservation districts to acquire agricultural easements, and authorizes the Director to make matching grants to the districts for that purpose.
- Adds that the value of an agricultural easement may be determined not only by a general real estate appraiser as in continuing law, but also by a points-based appraisal system established by the Director of Agriculture, and authorizes the Director to include specified factors in that system.

### *Applications regarding new drugs*

- Eliminates the procedures under which an application could be submitted to the Director of Agriculture for the sale, delivery, offer for sale, holding for sale, or giving away of a new drug.

**Soil and water conservation districts**

- Establishes additional, detailed procedures, requirements, and other provisions governing the construction of an improvement by a soil and water conservation district.
- Increases the maximum maturity of soil and water conservation district improvement bonds from eight to fifteen years.
- Requires the state to provide matching aid to soil and water conservation districts for revenue collected through tax levies in excess of the ten-mill levy limitation approved for the benefit of those districts.
- Authorizes a board of township trustees to enter into a contract with a soil and water conservation district for the purchase of services.

**Southern Ohio Agricultural and Community Development Foundation**

- Authorizes the Director of Agriculture and the Director of Development to appoint designees to serve in their respective places as ex officio officers of the board of trustees of the Southern Ohio Agricultural and Community Development Foundation.

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## CONTENT AND OPERATION

### *Meat and poultry slaughtering and processing establishments*

#### *Overview and background*

The Meat and Poultry Inspection Law establishes generally parallel requirements governing meat slaughtering and processing establishments (meat establishments) and poultry slaughtering and processing establishments (poultry establishments).<sup>1</sup> Included in those requirements is the requirement that meat

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<sup>1</sup> *Under the meat inspection provisions of the Meat and Poultry Inspection Law retained by the act, "establishment" means all premises in the state where animals are slaughtered or otherwise prepared for food purposes, meat canneries, sausage factories, smoking or curing operations, and similar places (sec. 918.01(C)). "Animals" means cattle, calves, sheep, swine, horses, mules, other equines, goats, bison, cervidea, other bovidea, camelidae and hybrids thereof, ratites, domestic rabbits, domestic deer, as defined in the Division of Wildlife Law, or other animals determined by the Director of Agriculture by rule for human food purposes (secs. 918.01(D) and 918.12(A), not in the act).*

*Under the poultry inspection provisions of the Meat and Poultry Inspection Law unchanged by the act, "establishment" means any premises where poultry is slaughtered or otherwise prepared for food purposes (sec. 918.21(E), not in the act). "Poultry" means any domesticated bird, pheasant, quail, partridge, peafowl, grouse, captive raised*

establishments and poultry establishments be licensed by the Department of Agriculture in order to operate in this state. The Meat and Poultry Inspection Law also requires establishments to be inspected and establishes enforcement procedures when violations are discovered.

The act modifies several of these provisions. When parallel changes are made in both the meat establishment and poultry establishment provisions, the analysis discusses them together. The analysis specifies when there are differing requirements for meat establishments and poultry establishments.

### **License and license renewal requirements**

Under continuing law for both meat and poultry establishments, the Director must inspect an establishment prior to issuing a license. Former law required a meat establishment to be in compliance with the Meat and Poultry Inspection Law. A poultry establishment was required to be in compliance with the poultry establishment provisions of that Law and rules adopted under them. The act instead establishes identical compliance requirements. Under it, both meat and poultry establishments must be in compliance with the Meat and Poultry Inspection Law and rules adopted under it in order to receive a license. (Secs. 918.08(A) and 918.28(A).)

The act adds that if the Director finds after an inspection that an establishment is not in compliance with the Meat and Poultry Inspection Law and rules adopted under it, he must deny the license application. The applicant may appeal the denial in accordance with the Administrative Procedure Act. (Secs. 918.08(A) and 918.28(A).)

Continuing law requires a license for a meat establishment or a poultry establishment to expire annually on March 31 and to be renewed according to the standard renewal procedure established in the Standard License Renewal Procedure Law. The act specifies that a license for either a meat or poultry establishment can only be renewed if the Director finds that the establishment is in compliance with the Meat and Poultry Inspection Law and rules adopted under it. (Secs. 918.08(A) and 918.28(A).)

### **Enforcement by Director of Agriculture**

Under law largely retained by the act, if the Director determines that a licensed meat establishment is operating in violation of the Meat and Poultry Inspection Law or rules adopted under it, he must notify the licensee in writing of

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*wild turkey, captive raised waterfowl, or other poultry determined by the Director by rule (secs. 918.12(B) and 918.21(L), not in the act).*



the violation and give the licensee ten days from the date of notice to cease or correct the violation. The act specifies that the Director must inspect a meat establishment in order to determine whether it is in violation of the Meat and Poultry Inspection Law or rules adopted under it. Additionally, instead of requiring the licensee to cease or correct the violation, the act requires him to cease or correct the conditions causing the violation. (Sec. 918.08(C).)

Former law provided that if the violation at a meat establishment continued after the expiration of the ten-day period, the Director could withdraw inspection and order the establishment to cease those operations subject to the Meat and Poultry Inspection Law. Any such order and the appeal of that order were governed by the Administrative Procedure Act. The act instead provides that if the conditions causing the violation continue after the expiration of the ten-day period, the Director may do either of the following: (1) impose progressive enforcement actions in the same manner as inspectors (see "**Enforcement by inspectors**," below), or (2) suspend or revoke the establishment's license in accordance with the Administrative Procedure Act. (Sec. 918.08(C).)

Similarly, continuing law specifies that if the Director determines that a licensed poultry establishment is operating in violation of the poultry establishment provisions of the Meat and Poultry Inspection Law or rules or orders adopted or made under them, he must notify the licensee in writing of the violation and give the licensee ten days from the date of notice to correct the conditions causing the violation. The act specifies that the Director must inspect an establishment in order to determine whether it is in violation of the Meat and Poultry Inspection Law or rules or orders adopted or issued under it. (Sec. 918.28(B).)

If the conditions that are causing a violation at a poultry establishment are not corrected within the ten-day period, continuing law authorizes the Director to revoke or suspend the license in accordance with the Administrative Procedure Act. The act also gives the Director authority to impose progressive enforcement actions in the same manner as inspectors (see "**Enforcement by inspectors**," below). (Sec. 918.28(B).)

Under law largely retained by the act, if the Director believes that either a meat or poultry establishment is being operated under such insanitary conditions as to be a hazard to public health, or if he determines that either type of establishment is not in compliance with its hazard analysis critical control point system as required by rules, he may condemn or retain the product on hand and immediately withdraw inspection from the establishment until the insanitary conditions are corrected or until the establishment is in compliance with its hazard analysis critical control point system, as applicable (secs. 918.08(E) and 918.28(D)). The act changes "hazard analysis critical control point system" to

"hazard analysis critical control point plan" in order to be consistent with federal guidelines (secs. 918.02(G), 918.08(E), 918.25(E), and 918.28(D)). The act also authorizes the Director to immediately take those actions with regard to a meat establishment prior to an adjudication hearing as required under the Administrative Procedure Act. The Director subsequently must afford a hearing upon the request of the owner or operator of the meat establishment. (Sec. 918.08(E).)

Under the act, if the Director determines that the owner or operator of, or any person employed by, either a licensed meat or licensed poultry establishment forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with any person while that person was engaged in, or because of the person's performance of, official duties under applicable provisions of the Meat and Poultry Inspection Law or the rules adopted under them, the Director immediately may withdraw inspection from the establishment prior to an adjudication hearing as required under the Administrative Procedure Act (secs. 918.08(G) and 918.28(E)).

With regard to both meat and poultry establishments, the act also authorizes the Director, in addition to any remedies provided by law and irrespective of whether or not there exists an adequate remedy at law, to apply to the court of common pleas of the county in which a violation of applicable provisions of the Meat and Poultry Inspection Law or the rules adopted under them occurs for a temporary or permanent injunction or other appropriate relief concerning the violation (secs. 918.08(H) and 918.28(F)).

### **Enforcement by inspectors**

Under law retained in part by the act, if an inspector determines that a licensed meat establishment is operating in violation of the meat establishment provisions of the Meat and Poultry Inspection Law or rules adopted under them, he must notify the licensee in writing of the violation. The poultry establishment provisions of that Law have the same notification requirement with regard to violations of those provisions. Instead of requiring an inspector of either type of establishment to notify the applicable licensee of a violation, the act authorizes the inspector to notify the applicable licensee. (Secs. 918.08(D)(1) and 918.28(C)(1).)

Continuing law authorizes an inspector of either a meat or poultry establishment to immediately impose progressive enforcement actions against an establishment that violates either the meat establishment provisions or the poultry establishment provisions of the Meat and Poultry Inspection Law or rules adopted under them, as applicable, including withholding the mark of inspection, suspension of inspection, and suspension of inspection held in abeyance (see below). The act adds withdrawal of inspection to the list of authorized actions. (Secs. 918.08(D)(1) and 918.28(C)(1).)

Under law retained by the act for both meat and poultry establishments, "suspension of inspection held in abeyance" means a period of time during which a suspension of inspection is lifted because an establishment has presented the Director with a corrective action plan that, if implemented properly, would bring the establishment into compliance with the Meat and Poultry Inspection Law. The act adds that the corrective action plan also would have to bring the establishment into compliance with rules adopted under that Law. (Secs. 918.08(D)(2) and 918.28(C)(2).)

### **Prohibition**

Continuing law prohibits a person from selling meat or meat products that have not been inspected in compliance with the meat establishment provisions of the Meat and Poultry Inspection Law. The act also prohibits a person from offering for sale meat or meat products that have not been inspected in compliance with those provisions. (Sec. 918.11(B).)

### **Definition of "retail dealer" and "retail butcher"**

Law unchanged by the act exempts from the Meat and Poultry Inspection Law a retail dealer or retail butcher who sells only meat or meat products that have been inspected in compliance with that Law directly to household consumers in retail stores. In addition, only the licensure requirement and the provisions of that Law governing sanitation, adulteration, misbranding, and use of the official mark apply to a retail dealer or retail butcher who sells only meat or meat products that have been inspected in compliance with the meat establishment provisions of the Meat and Poultry Inspection Law and whose operation or sales are other than those traditionally and usually conducted at retail stores or restaurants as prescribed by rules. (Sec. 918.10, not in the act.)

Under law retained in part by the act, "retail dealer" or "retail butcher" means any place of business where the sales of products are made to consumers only, at least 75% of the total dollar value of sales of products represents sales to household consumers, and the sales of products to consumers other than household consumers does not exceed \$28,800 per year. The act changes the limit on the sale of products to consumers other than household consumers from \$28,800 per year to the adjusted dollars limitation for annual retail sales published in the Federal Register by the Food Safety and Inspection Service in the United States Department of Agriculture. (Sec. 918.01(P).)

## Dairies Law revisions

### Licensure of milk processors

**Overview.** Under continuing law, grade A milk processors and manufacture milk processors must obtain a license from the Director of Agriculture to act as or hold themselves out as processors. An applicant for either type of processor license must comply with certain licensure requirements established by the Director, including passing an inspection that is made in accordance with rules adopted by the Director.<sup>2</sup>

**Revisions of definitions.** Continuing law defines "grade A milk processor" as a person who operates or controls a milk plant that is located in Ohio or from which grade A milk or grade A milk products are sold or offered for sale for human consumption. The act adds to the definition a person who operates or controls a transfer station, receiving station, or milk transport cleaning facility that is located in Ohio or from which grade A milk or grade A milk products are sold or offered for sale for human consumption, as applicable.<sup>3</sup> (Sec. 917.01(V).) Thus, through application of the definition, the statutes governing grade A milk processors will also govern transfer stations, receiving stations, and milk transport cleaning facilities of grade A milk.

Similarly, under continuing law, "manufacture milk processor" means any person who operates or controls a manufacture milk plant that is located in Ohio or from which manufacture milk or manufactured milk products are sold or offered for sale for human consumption. The act adds to the definition any person who operates or controls a transfer station, receiving station, or milk transport cleaning facility that is located in Ohio or from which manufacture milk or manufactured milk products are sold or offered for sale for human consumption, as applicable. (Sec. 917.01(W).) Thus, through application of the definition, the statutes governing manufacture milk processors will also govern transfer stations, receiving stations, and milk transport cleaning facilities of manufacture milk.

### Requirements governing weighers, samplers, and testers

#### Continuing education requirements for weighers, samplers, and testers.

The act requires each licensed weigher, sampler, and tester annually to meet the

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<sup>2</sup> Continuing law establishes registration requirements for persons whose religion prohibits them from obtaining a license from the Director (sec. 917.09(J)).

<sup>3</sup> Neither prior law, continuing law, nor the act defines transfer station, receiving station, or milk transport cleaning facility.

continuing education requirements established in rules adopted by the Director (see below) (sec. 917.09(I)).<sup>4</sup> The Director must do both of the following:

(1) Adopt rules in accordance with the Administrative Procedure Act establishing requirements for continuing education courses for weighers, samplers, and testers licensed under the Dairies Law; and

(2) Review the continuing education courses for those licensed weighers, samplers, and testers and grant approval to those courses that meet the requirements established by the Director (sec. 917.02(B)).

**Temporary weigher, sampler, or tester licenses.** Continuing law authorizes the Director to issue a temporary weigher, sampler, or tester license to an applicant upon determining that the applicant has met all the qualifications for licensure as a weigher, sampler, or tester except successful completion of an examination. Prior law specified that a temporary weigher, sampler, or tester license was effective only until the date of the next examination. Instead of specifying that a temporary license is effective until the date of the next examination, the act specifies that such a license is effective for 90 days from the date of issuance. (Sec. 917.091.)

Under prior law, if an applicant for a temporary weigher, sampler, or tester license previously held a weigher, sampler, or tester license, the following provisions applied, as appropriate:

(1) In the case of a license that expired not more than 12 months previously, the applicant was required to submit an application and the appropriate fee, but was not required to take and pass the examination.

(2) In the case of a license that expired more than 12 months previously, the applicant was required to submit an application and the appropriate fee and was required to take and pass the examination. The applicant could apply for and receive licenses, both temporary and permanent, to the same extent as a new applicant.

The act eliminates the above requirements regarding previously licensed weighers, samplers, and testers. (Sec. 917.091(A) and (B).)

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<sup>4</sup> Continuing law defines "weigher, sampler, or tester" as a person who, in order to determine volume, weight, or composition for the purpose of determining price, weighs, tests, or samples either of the following: (1) milk at a dairy farm, or (2) milk or cream purchased by a dealer from a milk producer or co-operative association (sec. 917.01(X)).

### **Powers and duties of Milk Sanitation Board**

Under law largely retained by the act, the Milk Sanitation Board, after reviewing the Director's annual report on the expenses of administering and enforcing the Dairies Law and rules adopted under it for the preceding state fiscal year, must prescribe inspection fees for milk producers and milk processors and may prescribe inspection fees for milk haulers. The act makes one change to the Board's responsibilities to prescribe inspection fees. It authorizes, rather than requires, the Board to prescribe inspection fees for milk producers. (Sec. 917.031.)

### **Other provisions**

Under continuing law, all proceedings under the Dairies Law generally must comply with the Administrative Procedure Act. However, the Dairies Law establishes specific procedures governing adjudicatory hearings for persons issued a license under the Dairies Law. The act revises one of those procedures. Instead of requiring that the location of any adjudicatory hearing that a licensee requests be the county seat of the county in which is located the licensee's facility that is involved in the alleged violation as in former law, the act requires that the hearing be held at the central office of the Department of Agriculture. (Sec. 917.22(B).)

Under continuing law, the Director may adopt rules in accordance with the Administrative Procedure Act regulating records that are to be kept by persons holding a license issued under the Dairies Law and the inspection and auditing of books and records of those persons. The act adds that the Director may adopt rules that regulate any other records that are required to be kept by other rules adopted by the Director. (Sec. 917.02(A)(1)(h).)

Under prior law, vehicles and containers used by milk haulers were subject to inspection by a person designated by the Director. The act instead specifies that milk transport vehicles are subject to such inspection.<sup>5</sup> (Sec. 917.19(B).)

Finally, the act makes several technical and conforming changes (secs. 917.01(B) and (Z), 917.02(A)(2), (4), and (7), 917.031, and 3707.38).

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<sup>5</sup> *Neither prior law, continuing law, nor the act defines "milk transport vehicle."*

## **Claims for indemnification for livestock injured or killed by coyotes or black vultures**

### **Overview**

Continuing law establishes an indemnification program for owners of certain animals that have been injured or killed by a coyote or a black vulture. An owner's claim must meet several requirements and be verified and approved by specified persons in order for a payment on the claim to be made. The dog warden and, if applicable, the wildlife officer of the area where the owner's animal was injured or killed must follow certain procedures in verifying the owner's claim for indemnification. Finally, the Department of Agriculture must perform specified tasks regarding the review and payment of the claims. The act revises the procedures for filing a claim from the owner's submittal to the Department's final review and processing of the claim.

### **Responsibilities of owners of livestock**

Prior law required an owner of horses, sheep, cattle, swine, mules, goats, domestic rabbits, or domestic fowl or poultry that had an aggregate fair market value of \$10 or more and that had been injured or killed by a coyote or a black vulture to notify the dog warden within three days after the loss or injury was discovered. The act contains such a notification requirement, but makes the following revisions in its specific provisions: (1) replaces the list of animals with a definition of "animal" that includes all of the above animals, (2) similarly, defines "predator" as a coyote or a black vulture, (3) replaces the requirement that an animal have an aggregate fair market value of \$10 or more with a requirement that the owner believe that the animal has a fair market value of \$25 or more, (4) defines "fair market value" as the average price that is paid for a healthy grade animal at a livestock auction selected by the Director of Agriculture and licensed under the Livestock Dealers Law, (5) defines "grade animal" as an animal that is not eligible for registration by a breed association or in a registry, and (6) requires the owner to notify the dog warden by telephone and document by photograph the wounds sustained by the animal within 72 hours after the loss or injury has been discovered rather than simply notify the dog warden within three days after the discovery. (Sec. 955.51(A) and (B).)

Under prior law, in order to file a claim, an owner was required to wait for the dog warden's and the wildlife officer's determinations on the cause of the injury or death of an animal (see below). If the dog warden found that the loss or injury was made by a coyote or a black vulture and the wildlife officer affirmed that finding or stated that he was uncertain of the dog warden's finding, the owner could proceed with a claim, and the dog warden was required to provide the owner with duplicate copies of the claim form prescribed by the Director and assist the

owner in filling it out. The act instead provides that after notifying the dog warden of the loss or injury, if the owner chooses to file a claim, he must complete a claim form for indemnification in quadruplicate as prescribed by the Director and provided by the dog warden. The owner may request, and the dog warden must provide, assistance in filling out the form. For purposes of the Department of Agriculture's review and certification of claims (see below), the owner must send to the Department, within 30 days after discovery of the animal, the original copy of the claim form, all photographs documenting the wounds of the animal, and any other pertinent facts in his possession. The act requires the owner to retain a copy of the claim form and provide a copy of the form to both the dog warden and the wildlife officer who investigates the claim, if applicable. (Sec. 955.51(B).)

Under prior law, the owner was required to set forth in the claim form the kind, grade, quality, and what he had determined to be the fair market value of the animals, fowl, or poultry, the nature and amount of the loss or injury, the place where the loss or injury occurred, and all other pertinent facts in the possession of the claimant. If the animals, fowl, or poultry died as a result of their injuries, their fair market value was the market value of uninjured animals, fowl, or poultry on the date of the death of the injured animals, fowl, or poultry. If the animals, fowl, or poultry did not die as a result of their injuries, their fair market value was their market value on the date on which they received their injuries. The act eliminates these provisions, but enacts similar provisions regarding the date of death or injury in the statute that specifies the Department's responsibilities (see below). (Sec. 955.51(A).)

Law largely retained by the act states that if the animals, fowl, or poultry that are injured or killed are registered in an accepted association or registry, the owner or the owner's employee or tenant must submit with the claim form the registration papers showing the lines of breeding, age, and other relevant matters. If the animals are the offspring of registered stock and eligible for registration, the registration papers showing the breeding of the offspring must be submitted. Under the act, the owner, instead of the owner or the owner's employee or tenant, must submit this registration information with the claim form. (Sec. 955.51(B).)

### **Responsibilities of dog wardens**

The act makes several changes regarding the role of dog wardens in the indemnification process in addition to those discussed above. Law largely retained by the act states that if the dog warden finds after an investigation that a coyote or a black vulture did not cause the loss of or injury to livestock, the owner has no claim for indemnification. The act replaces the term "finds" with the term "determines" and makes conforming changes throughout the act's provisions pertaining to livestock indemnification. (Sec. 955.51(C).)

Continuing law specifies that if the dog warden determines that a coyote or a black vulture caused the loss or injury, the dog warden must notify the wildlife officer of that determination. The act adds that the dog warden must notify the wildlife officer by telephone. It also specifies that for the purposes of the Department's review and certification of claims (see below), the dog warden must send to the Department his determination of whether the animal was killed or injured by a predator and any other documents, testimony, or information that he has received relating to the loss or injury of the animal. (Sec. 955.51(C).) (For additional changes regarding the dog warden's responsibilities, see *Review of claims under prior law*," below.)

### *Responsibilities of wildlife officers*

Law generally retained by the act requires a wildlife officer, after being notified by the dog warden of the dog warden's finding on a claim, to confirm the finding, disaffirm it, or state that he is uncertain about the finding. Prior law specified that if the wildlife officer affirmed the finding of the dog warden or stated that he was uncertain about that finding, the owner could proceed with a claim. The act makes several changes in these provisions. First, it replaces the term "finding" with the term "determination" and makes conforming changes. Second, it specifies that if the wildlife officer affirms the determination of the dog warden or states that he is uncertain about that determination, he must so notify the Department in writing for the purposes of the Department's review and certification of claims (see below). Finally, the act states that if the wildlife officer disaffirms the determination of the dog warden, the owner has no claim for indemnification. (Sec. 955.51(D).)

### *Review of claims under prior law*

Under prior law, if the dog warden found all the statements that the owner made on the claim form to be correct and agreed with the owner as to the fair market value of the animals, fowl, or poultry, he promptly had to so certify and send both copies of the form, together with whatever other documents, testimony, or information the dog warden had received relating to the loss or injury, to the Department (sec. 955.51(B)). However, if the dog warden did not find all the statements to be correct or did not agree with the owner as to the fair market value, the owner could appeal to the Department for a determination of the owner's claim. In that case the owner was required to secure statements as to the nature and amount of the loss or injury from at least two witnesses who viewed the results of the killing or injury and who could testify about the results. The owner also was required to submit both copies of the form to the Department no later than 20 days after the loss or injury was discovered. The dog warden was required to submit to the Department whatever documents, testimony, and other information the dog warden had received relating to the loss or injury. The

Department was required to receive any other information or testimony that would enable it to determine the fair market value of the animals, fowl, or poultry injured or killed. The act eliminates these provisions and replaces them as discussed below. (Sec. 955.51(C).)

### **Responsibilities of Department of Agriculture**

Under prior law, the Department was required to hear claims submitted to it by dog wardens and by owners on appeal as discussed above. The act instead requires the Department to hear claims that are approved by the dog warden and supported by the wildlife officer. The act retains a requirement that the Department hear claims in the order of their filing. It also retains authority for the Department to allow the claims in full or in part, or to disallow any claim, as the testimony shows to be just, but adds as the testimony and information submitted with a claim show to be just. (Sec. 955.52(A)(1).)

As under prior law, the Department, under the act, is to make the final determination of the fair market value of any animal that is the subject of a claim. The act specifies that if the animal that is the subject of a claim dies as a result of the injuries that it received from a predator, the amount of indemnity is the fair market value of the animal on the date of its death. If the animal does not die as a result of its injuries, the amount of indemnity is the fair market value of the animal on the date that it received its injuries. If the animal is registered or eligible for registration by a breed association or in a registry, the amount of indemnity is 125% of the fair market value of the animal on the date that it was killed or injured. If the date of death or injury of an animal cannot be determined, the amount of indemnity must be based on the fair market value of the animal on the date that the animal was discovered by its owner. (Sec. 955.52(A)(1).) Under the act, if the owner of an animal does not agree with the Department's determination of the animal's fair market value, he may appeal the determination in accordance with the Administrative Procedure Act (sec. 955.52(A)(2)).

Continuing law requires the Department to certify any claim or part of a claim. The act adds that the Department must certify a claim that it has found to be valid. Under prior law, claims that were certified were required to be paid out of the Agro Ohio Fund created under law unchanged by the act. The act instead requires claims to be paid out of money that has been appropriated from the General Revenue Fund for those purposes. It retains a provision under which no claim can be paid if a claim for the same loss or injury has been paid or is payable under a policy or policies of insurance and a provision under which a claim may be paid for the amount of any deductible paid or payable by the claimant under insurance. The act also provides that a claim cannot be paid if the owner of an animal who otherwise would receive indemnity under a claim has been paid more than \$500 within the immediately preceding year from the money appropriated for

that purpose. However, that owner may be paid if he has implemented a voluntary animal damage control plan that meets the requirements established in rules adopted under the act (see below). (Sec. 955.52(A)(3).)

Under the act, if at any time the money that has been appropriated from the General Revenue Fund for the purposes of paying certified claims for a fiscal year is not sufficient to pay those claims, the Department must disapprove the claims. Any claim that has been disapproved due to lack of money cannot be resubmitted. (Sec. 955.52(B).)

The act authorizes the Department either to assist owners in developing and implementing a voluntary animal damage control plan to prevent and minimize loss or injury to animals by predators or to enter into an agreement with another state agency, a federal agency, or a person to provide such assistance. The Department may use no more than 50% or \$25,000, whichever is less, of the money that is appropriated from the General Revenue Fund for the purposes of paying certified claims to pay the costs incurred by the Department for either providing assistance or entering into an agreement to provide that assistance. (Sec. 955.52(C).)

Finally, under the act, the Director of Agriculture must adopt rules in accordance with the Administrative Procedure Act that are necessary to administer the livestock indemnification program, including rules that establish requirements governing voluntary animal damage control plans (sec. 955.52(D)).

### **Pesticides Law revisions**

#### **Licensure requirement involving application of pesticides to public sites**

Continuing law prohibits an owner of a business other than a pesticide business or an employee of such an owner from applying pesticides at certain publicly accessible sites that are located on the business property unless the business owner or employee holds a valid commercial applicator license issued by the Director of Agriculture. Prior law included on the list of these publicly accessible sites food service operations and retail food establishments as defined in the Retail Food Establishments and Food Service Operations Law and wholesale food establishments as defined in the Pure Food and Drug Law, among other locations. (Sec. 921.06(A)(1).)

The act modifies the list of the publicly accessible sites by eliminating wholesale food establishments from the list, adding to the list food processing establishments as defined in the Pure Food and Drug Law and colleges as defined in the Post-Secondary Enrollment Options Program Law, and including on the list

only food service operations and retail food establishments that must be licensed rather than all such establishments. (Sec. 921.06(A)(1).)

### **Exemption from license fee for employee of Department of Agriculture**

Under continuing law, applicants for a commercial applicator license or renewal must pay a license fee. Law retained in part by the act specifies that the fee does not apply to an applicant who is an employee of the Department of Agriculture. The act limits the exemption from the fee requirement to such employees whose job duties require licensure as a commercial applicator as a condition of employment. (Sec. 921.06(A)(3).)

### **Enforcement authority**

Continuing law authorizes the Director to suspend, prior to a hearing, for not longer than ten days, any license, permit, or registration issued under the Pesticides Law if he finds that the applicant or the holder of a license, permit, or registration is no longer qualified, has violated any provision of the Pesticides Law or rules adopted under it, has been found guilty of violating the federal pesticides law, or has been found guilty of a misdemeanor involving moral turpitude or of a felony. The act adds that after the opportunity for a hearing, the Director may, for any of the reasons described, deny, suspend, revoke, refuse to renew, or modify any provision of any license, permit, or registration issued under the Pesticides Law. (Sec. 921.23.)

### **Agricultural easements**

#### **Overview**

Continuing law authorizes the Director of Agriculture, municipal corporations, counties, and townships to purchase or acquire by gift, devise, or bequest agricultural easements to retain the use of land predominantly in agriculture.<sup>6</sup> It also authorizes charitable organizations that are exempt from

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<sup>6</sup> Under law retained by the act, "agricultural easement" means an incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions (sec. 901.21(A)(1) by reference to sec. 5301.67, not in the act). "Agriculture" is defined as those activities occurring on land devoted exclusively to agricultural use, which is land that is eligible for agricultural use property tax valuation under the Current Agricultural Use Value Law, or on land that constitutes a homestead (sec. 901.21(A)(2)).

federal income taxation and organized for certain land preservation or protection purposes to acquire and hold agricultural easements. If a municipal corporation, county, township, or charitable organization cannot fund the purchase of an easement on its own, it may apply for a matching grant from the Director. The Director must use money from the Clean Ohio Agricultural Easement Fund exclusively to purchase agricultural easements in the name of the state and to provide matching grants to charitable organizations, municipal corporations, counties, and townships for the purchase of such easements. (Sec. 901.21.)

**Acquisition and holding of agricultural easements by soil and water conservation districts**

The act retains law that authorizes an owner of land to grant an agricultural easement to the Director or to a charitable organization, municipal corporation, county, or township and adds that an owner of land may grant an agricultural easement to a soil and water conservation district (sec. 5301.68). Similarly, it specifies that the board of supervisors of a soil and water conservation district, with money in any fund not required by law to be used for other specified purposes or with money provided to the board through matching grants for the purchase of agricultural easements, may purchase agricultural easements or may acquire them by gift, devise, or bequest. As under continuing law, the agricultural easements must be on land that is valued for purposes of real property taxation at its current value for agricultural use or that constitutes a homestead when the easement is granted. (Sec. 5301.691(C).)

In addition, the act makes applicable to soil and water conservation districts all continuing requirements and other provisions governing the creation, holding, supervising, and extinguishment of agricultural easements. Further, the act makes available to soil and water conservation districts matching grants provided by the Director for the purchase of agricultural easements. (Secs. 901.21, 901.22, and 5301.68.)

**Points-based appraisal system for valuation of agricultural easements**

Continuing law specifies that a matching grant that is made by the Director to a municipal corporation, county, township, or charitable organization for the purchase of an agricultural easement and that consists of money from the Clean Ohio Agricultural Easement Fund may provide up to 75% of the value of the agricultural easement. The value of an easement is to be determined by a general real estate appraiser who is certified under the Real Estate Appraisers Law. The act adds that the value of an agricultural easement also may be determined through a points-based appraisal system established by the Director under the act (see below). (Sec. 901.22(D)(1).)

The act requires the Director to establish a points-based appraisal system for use in determining the value of an agricultural easement. He may include any or all of the following factors in the system:

(1) Whether the applicable county auditor has determined that the land is land that is devoted exclusively to agriculture for the purposes of the Current Agricultural Use Value Law;

(2) Changes in land values following the completion of the applicable county auditor's reappraisal or triennial update;

(3) Soil types and productivity;

(4) Proximity of the land to land that is already subject to an agricultural easement, conservation easement created under the Conservation Easements Law, or similar land-use limitation;

(5) Proximity of the land to water and sewer lines, road interchanges, and nonagricultural development;

(6) Parcel size and roadway frontage of the land;

(7) Existence of an agreement between the supervisors of a local soil and water conservation district and anyone who occupies land within the district regarding natural resource conservation or flood prevention or of an operation and management plan developed by the owner or operator of agricultural land or a concentrated animal feeding operation and approved either by the Chief of the Division of Soil and Water Conservation in the Department of Natural Resources or by the supervisors of the local soil and water conservation district;

(8) Existence of a comprehensive zoning plan that is adopted by a board of county commissioners under the County Rural Zoning Law, by a board of township trustees under the Township Zoning Law, or by the planning commission of a municipal corporation under the Planning Commissions Law; and

(9) Any other factors that the Director determines are necessary for inclusion in the system (sec. 901.22(D)(2)).

#### **Applications regarding new drugs**

Under continuing law, no person can distribute (i.e. sell, deliver, offer for sale, hold for sale, or give away) any new drug unless an application with respect to the drug has become effective under section 505 of the Federal Food, Drug, and

Cosmetic Act.<sup>7</sup> Prior law also provided an alternative situation in which a person lawfully could distribute a new drug. Under prior law, such distribution was authorized if a drug was not subject to the Federal Food, Drug, and Cosmetic Act, the drug had been tested and found to be safe for use under the conditions prescribed, recommended, or suggested in its labeling, and, prior to selling the drug or offering it for sale, there had been filed with the Director of Agriculture an application setting forth full reports of investigations that had been made to show whether or not the drug was safe for use, a full list of the articles used as components of the drug, a full statement of the drug's composition, a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug, samples, as the Director may have required, of the drug and the articles used as components of the drug, and specimens of the labeling proposed to be used for the drug. (Sec. 3715.65(A).)

Under prior law, an application that was filed with the Director became effective 60 days after it was filed, except that if the Director found after due notice to the applicant and after giving the applicant an opportunity for a hearing that the drug was not safe for use under the conditions prescribed, recommended, or suggested in the drug's proposed labeling, the Director was required, prior to the effective date of the application, to issue an order refusing to permit the application to become effective. The order could be revoked by the Director. (Sec. 3715.65(B).)

The act eliminates the procedures by which a new drug could be distributed if it was not subject to the Federal Food, Drug, and Cosmetic Act and had been tested and found to be safe and if an application was filed with the Director. Thus, under the act, a new drug can be distributed only if an application with respect to

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<sup>7</sup> Law unchanged by the act defines "new drug" as any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof or any drug the composition of which is such that the drug, as a result of investigation to determine its safety for use under such conditions, has become so recognized, but that has not, other than in an investigation, been used to a material extent or for a material time under such conditions (sec. 3715.01(A)(10), not in the act). "Drug" means any of the following: (1) articles recognized in the United States Pharmacopoeia and National Formulary, or any supplement to them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (3) articles, other than food, intended to affect the structure or any function of the body of humans or other animals, or (4) articles intended for use as a component of any of the foregoing articles, other than devices or their components, parts, or accessories (sec. 3715.01(A)(4), not in the act).

the drug has become effective under section 505 of the Federal Food, Drug, and Cosmetic Act. (Sec. 3715.65(A) and (B).)

### **Soil and water conservation districts**

#### **Background**

Continuing law creates soil and water conservation districts for each county. Each district is a political subdivision distinct from the county and is governed by a five-member board of supervisors. The boards operate under the general oversight of the Ohio Soil and Water Conservation Commission within the Department of Natural Resources. Each district exercises jurisdiction over soil conservation; flood prevention; water development, use, conservation, and disposal; and conservation of other natural resources within the county. With the approval of the board of county commissioners, a board of supervisors may construct improvements for water management and development that benefit lands within a specified project area by promoting the economical, industrial, and social development of the area. (Secs. 1515.02, 1515.03, 1515.05, 1515.07, 1515.08, and 1515.20 (not in the act), and 1515.21 (in the act).)

#### **Improvements by soil and water conservation districts**

**Prior law.** Prior law required the supervisors of a district, after finding that the construction of an improvement would improve water management and development in the county to the benefit of the lands in it, that the cost of the proposed improvement would be less than the benefits, and that the improvement would benefit the lands in the area as discussed above, to determine the watershed or other areas benefited by the proposed improvement and certify the finding and determination to the board of county commissioners of each county containing territory in the benefited area. The certification had to be accompanied by a plan of the improvement and a map of the watershed and other areas determined to be benefited by it. (Sec. 1515.20.) The act repeals these provisions and replaces them with the procedures discussed below. It also amends continuing provisions governing the duties and authority of a board of county commissioners to conform with the new procedures.

**Petition.** The act specifies that an owner of land that is located in a soil and water conservation district may file a petition with the supervisors of the district requesting the construction of a conservation works of improvement (sec. 1515.18). The act defines "owner of land," "landowner," and "owner" as an owner of record as shown by the records in the office of the county recorder. With respect to an improvement or a proposed improvement, "owner of land," "landowner," and "owner" also includes any public corporation and the director of any department, office, or institution of the state that is affected by the

improvement or that would be affected by the proposed improvement, but that does not own any right, title, estate, or interest in or to any real property. (Sec. 1515.01(C).) Under the act, "land" includes any estate or interest, of any nature or kind, in or to real property, or any easement in or to real property, or any right to the use of real property, and all structures or fixtures attached to real property, including, but not restricted to, all railroads, roads, electric railroads, street railroads, streets and street improvements, telephone, telegraph, and transmission lines, underground cables, gas, sewage, and water systems, pipelines and rights of way of public service corporations, and all other real property whether public or private (sec. 1515.01(M) by reference to sec. 6131.01(B), not in the act). The act defines "conservation works of improvement" or "improvement" as an improvement that is made under authority established in continuing law under which the supervisors of a soil and water conservation district may implement, construct, repair, maintain, and operate preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention and for the conservation, development, utilization, and disposal of water within the district on lands owned or controlled by the state or any of its agencies and on any other lands within the district, which works may include any facilities authorized under state or federal programs, and may acquire, by purchase or gift, may hold, encumber, or dispose of, and may lease real and personal property or interests in such property for those purposes (sec. 1515.01(L) by reference to sec. 1515.08(C), not in the act).

Upon the receipt of a petition requesting the construction of an improvement, the supervisors must make a preliminary determination to accept or reject the petition. Under the act, a petition may be rejected if the supervisors determine that the information that it contains about the proposed improvement is insufficient to enable the supervisors to proceed with the petition or if the petition appears to be frivolous. The supervisors also may reject a petition on the grounds that the district lacks sufficient staff or other resources to proceed with the improvement. If the supervisors reject a petition, they must notify the petitioner of the reasons for the rejection. A petition that was rejected due to insufficient information may be supplemented with additional information and filed again. (Sec. 1515.18.)

If the supervisors accept a petition for a proposed improvement, the act requires them to establish a date and time for a view of the proposed improvement, which date must be not fewer than 25 nor more than 90 days after the date on which the petition was filed. The supervisors must designate a convenient place near the proposed improvement at which the view will start. The act also requires the supervisors, upon receipt of a petition, to establish a date, time, and location at which they will hold a hearing on the proposed improvement. The hearing must occur not later than 90 days after the date established for the view. (Sec. 1515.18.)

**Notification.** The act specifies that as soon as the supervisors have established the dates, times, and locations of the view and the hearing concerning a proposed improvement, they must send, at least 20 days prior to the date established for the view, a written notice of the view and the hearing to the landowners within the area to be benefited by the proposed improvement and to the board of county commissioners and the county engineer (sec. 1515.181). The act defines "benefit" or "benefits" as advantages to land and owners, to public corporations, and to the state resulting from drainage, conservation, control, and management of water and from environmental, wildlife, and recreational improvements. "Benefit" or "benefits" includes, but is not limited to, any of the following factors: (1) elimination or reduction of damage from flooding, (2) removal of water conditions that jeopardize public health, safety, or welfare, (3) increased value of land resulting from an improvement, (4) use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other incidental purpose, or (5) providing an outlet for the accelerated runoff from artificial drainage if a stream, watercourse, channel, or ditch that is under improvement is called upon to discharge functions for which it was not designed. Uplands that have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other human methods are considered to be benefited by an improvement that is required to dispose of the accelerated flow of water from the uplands. (Sec. 1515.01(K).)

The act requires the supervisors to provide the notification of the view and the hearing to all landowners that are adjacent to the proposed improvement by certified mail and also requires the supervisors to notify all others by certified mail or first class mailings. Any such written notice must have the words "Legal Notice" printed in plain view on the face of the envelope. In addition, the supervisors must invite to the view and the hearing the staff of the soil and water conservation district and the staff of the Natural Resources Conservation Service in the United States Department of Agriculture that is involved with the district together with any other people that the supervisors consider to be necessary to the proceedings. (Sec. 1515.181.)

**View.** On the date established for the view of a proposed improvement, the supervisors must meet at the designated location near the proposed improvement at the established time. At that time, they must hear proof of the need for the proposed improvement offered by any landowner that is affected by it. The act requires the supervisors to view the area in which the proposed improvement is to be constructed. If the proposed improvement is a ditch, the view must include the line of the proposed ditch and each branch, lateral, or spur of the ditch that is mentioned in the petition. If the area to be viewed is extensive, the supervisors may conduct the view on more than one day and may adjourn from day to day, or a longer period, until the view is completed. (Sec. 1515.182.)

**Preliminary report.** The act requires the supervisors of a soil and water conservation district, upon acceptance of a petition requesting the construction of an improvement, to begin to prepare, as a guide to the board of county commissioners and the petitioners, a preliminary report regarding the proposed improvement. The supervisors must present the completed preliminary report at the hearing that is held on the proposed improvement.

The act specifies that the preliminary report must include a preliminary estimate of cost, comments on the feasibility of the project, and a statement of the supervisors' opinion as to whether the benefits from the project are likely to exceed the estimated cost. The preliminary report must identify all factors that are apparent to the supervisors, both favorable and unfavorable to the proposed improvement, so that the petitioners may be informed concerning what is involved with the construction of the improvement.

The act specifies that in addition to reporting on the improvement as petitioned, the supervisors may submit alternate proposals to accomplish the intent of the petition. The preliminary report and all alternate proposals must be reviewed and receive concurrence from an engineer who is employed by the Division of Soil and Water Conservation or by the Natural Resources Conservation Service in the United States Department of Agriculture and who is responsible for providing technical assistance to the district or from any other registered professional engineer whom the supervisors choose. (Sec. 1515.183.)

**Hearing.** On the date and at the time established for the hearing on a petition for a proposed improvement, the supervisors must conduct the hearing. Prior to the hearing, landowners affected by the proposed improvement may file objections to it with the supervisors, and at the hearing the supervisors must hear any objections so filed. In addition, the supervisors must present their preliminary report on the proposed improvement and must hear any evidence offered by any landowner for or against construction of the proposed improvement. If necessary, the hearing may occur on more than one day and may be adjourned from day to day or for a longer time that may be reasonable so that all interested landowners may have an opportunity to be heard in favor of or in opposition to the proposed improvement. (Sec. 1515.184.)

**Potential subsequent view.** If modifications or alternatives to a proposed improvement are proposed or discussed at the hearing on the improvement, the supervisors may adjourn the hearing for a period of time that is necessary to conduct a subsequent view of the proposed improvement in light of the proposed changes. If it appears that a subsequent view is necessary, the supervisors must establish a date, time, and location for it and must notify, in the same manner, the same persons that were required to be notified of the first view. (Sec. 1515.185.)

**Procedures upon approval of an improvement.** The act specifies that at the conclusion of the hearing on a proposed improvement, the supervisors may approve the petition for the improvement if they are reasonably certain that the cost of the proposed improvement will be less than the benefits from it and if they find that the improvement is necessary, that it will be conducive to the public welfare, that it will improve water management and development in the county in which the district is located to the advantage of lands located in it, and that it will aid lands in the area by promoting the economical, industrial, environmental, or social development of the area. Upon approval of the petition, the supervisors must establish a date by which they must complete, in accordance with the act's provisions, plans and specifications for the improvement together with estimates of damages from and costs for it. The date established must allow as much time as is necessary for the preparation of the plans, specifications, and estimates. The supervisors may extend the completion date if necessary. Upon completion of the plans, specifications, and estimates, the supervisors must do both of the following: (1) determine the area that would be benefited by the proposed improvement and certify the determination together with the supervisors' approval of the improvement to the board of county commissioners of each county containing land included in the benefited area, and (2) submit the plans, specifications, and estimates together with the preliminary report to each such board. (Sec. 1515.19.)

**Preparation of surveys, plans, and specifications.** Upon approval by the supervisors of a soil and water conservation district of a petition for a proposed improvement, the supervisors or their designee must conduct all necessary surveys for the proposed improvement. In addition, the supervisors or their designee must prepare plans for constructing the improvement and must prepare maps showing the location of the land that is proposed to be assessed for the improvement.

The act requires the supervisors or their designee to prepare specifications for construction of the improvement and to specify dimensions of any temporary easement that is necessary for construction purposes. In addition, the supervisors or their designee must make estimates of the cost of material and any excavation costs. The construction of the improvement may be divided into construction areas if that would be expedient.

The act states that in the case of an improvement that is a ditch or similar structure for the disposal of water, the specifications for its construction must provide for spreading and leveling of spoil banks and must provide for erosion and sediment control through the establishment of a sod or seeded strip not fewer than four feet nor more than 15 feet wide, measured at right angles to the top of the ditch bank on both sides of the ditch, except where suitable vegetative cover exists. The strip or other such controls must be considered to be part of the permanent improvement. Sod or seeded strips that are established and maintained

in excess of four feet must be compensated for by their removal from the taxable valuation of the property of which they are a part.

The act requires the supervisors or their designee to make note of all fences, floodgates, culverts, bridges, and other structures that will be removed or adjusted in constructing the improvement. The supervisors or their designee also must make note of any gates that need to be installed in existing fences in order to provide access to the improvement for maintenance purposes. The gates must be locked when requested by the owner of the fence and must be considered to be a part of the original improvement and subject to maintenance along with the improvement.

The supervisors must submit the plans, specifications, and other prepared information to the board of county commissioners of each county in which the proposed improvement is to be located. (Sec. 1515.191.)

**Schedule of damages.** The act requires the supervisors or their designee to estimate the value of land or other property that must be taken and the damages to be sustained by any owner as a result of the construction and subsequent maintenance of a proposed improvement. The supervisors or their designee must prepare a schedule of damages consisting of the name and address of each owner that is alleged to be damaged, the amount of the estimated damages, and an explanation of the injury on which the estimate is based. The supervisors' or their designee's schedule of damages also must contain the value of the land or other property that is necessary to be taken and a complete description of that land or other property. The supervisors must include the total of the estimated damages and valuations as part of the estimate of the total cost of constructing the improvement and must submit the schedule of damages to the board of county commissioners of each county in which the improvement is to be located. (Sec. 1515.192.)

**Estimate of cost.** The supervisors or their designee must make an estimate of the cost of the construction of a proposed improvement, which must include actual construction costs, any other expenses incurred in investigations and notifications related to the project, the value of land or other property that must be taken and the damages to be sustained by any owner as a result of the construction and subsequent maintenance of the proposed improvement, the cost of installing any gates in fences or any other structures that are necessary to provide access to the improvement for maintenance purposes, and any other incidental costs. Upon completion of the estimate of cost, the supervisors must submit it to the board of county commissioners of each county in which the improvement is to be located. (Sec. 1515.193.)

**Approval or disapproval by board of county commissioners.** Upon receiving a certification from a board of supervisors of the supervisors' approval of a proposed improvement and their determination of the area to be benefited by it, the board of county commissioners, within 60 days in accordance with continuing law, must approve or disapprove construction of the improvement. The act adds that when considering whether to approve or disapprove construction of an improvement, the board must consider all of the following factors: (1) the cost of location and construction, (2) the compensation for land or other property that must be taken, (3) the benefits to the public welfare, (4) the benefits to land, public corporations, and the state needing the improvement, (5) in the case of an improvement involving the drainage of water, the effect on land below the improvement that may be caused by constructing the improvement and the sufficiency or insufficiency of the outlet that receives flow from the improvement, and (6) any other proper matter that will assist the board in approving or disapproving construction of the improvement.

The act also adds that if the board approves construction of the improvement, the county engineer must file with the county recorder a property plat showing the general location of the improvement and a statement describing the dimensions of any permanent easement that is necessary for maintenance of the improvement. In the case of an improvement that is an open ditch, provisions that govern the permanent easement for maintenance of the ditch that are established in the Single County Ditch Law apply. (Sec. 1515.21.)

**Schedule of estimated assessments.** The act requires a board of county commissioners that approves construction of a proposed improvement or the board's designee to prepare a schedule of estimated assessments on property within the area that is to be benefited by the improvement. In preparing the schedule, the board or its designee must use information concerning the proposed improvement that must be submitted to the board by the supervisors of a soil and water conservation district. The information includes plans for the proposed improvement, including surveys, maps, and specifications, together with schedules of damages, cost estimates, and any related reports that the supervisors or their designee prepared.

The act requires the schedule of estimated assessments to include the name and address of each owner of land believed to be benefited by the proposed improvement together with a description of the land. The names and descriptions must be obtained from the tax duplicates of the county. The board or its designee must enter in the schedule the amount of each estimated assessment, which must be determined using considerations established in continuing law governing the levying of final assessments. In no case can an assessment be less than \$25. The total of the estimated assessments, including the total estimated assessments

allocated to public corporations and the state, must equal the estimated cost of the proposed improvement. The board must use the schedule of estimated assessments for purposes of levying final assessments under continuing law. (Sec. 1515.211.)

**Levy of assessments.** Continuing law specifies that upon receipt of a certification made by the supervisors of a soil and water conservation district, the board of county commissioners may adopt a resolution levying on the property within the project area an assessment at a uniform or varied rate based on the benefit to the area certified by the supervisors, as necessary to pay the cost of construction of the improvement not otherwise funded and to repay advances made for purposes of the improvement. The act adds to the actions that must occur before the resolution may be adopted. It specifies that the resolution may be adopted only following receipt of both the supervisors' certification and all plans, specifications, and estimates submitted by the supervisors and upon completion of the schedule of estimated assessments by the board of county commissioners. (Sec. 1515.24(A).)

Continuing law requires the board of county commissioners to give notice by first class mail to every public and private property owner whose property is subject to assessment and specifies information that the notice must contain. The act adds that the notice must contain a description of any easement on the property that is necessary for the improvement. (Sec. 1515.24(D)(1).)

**Maturity of bonds.** If the board of county commissioners levies assessments for an improvement by a soil and water conservation district, the board may issue general obligation bonds to finance the construction cost or delinquent tax and assessment bonds (secs. 133.17 and 131.23, respectively, not in the act). The bond issuance and payment of assessments are governed by the Single County Ditch Law.

Under that Law, the board of county commissioners must determine the number of semiannual installments in which landowners must pay an assessment, but at least two semiannual assessments generally must be allowed. If the cost of an improvement is more than \$500, the board may allow landowners to pay the assessment in more than two installments. Under prior law, when assessments were levied and bonds were issued to finance the construction of an improvement of a soil and water conservation district, the bonds were authorized to have a repayment period (i.e. maturity) of up to eight years, which corresponded with 16 semiannual installment payments. The act increases the maximum repayment period to 30 semiannual installments for bonds that are sold for such an improvement. (Sec. 6131.23.)



### **State matching aid**

Continuing law specifies that within the limits of funds appropriated to the Department of Natural Resources, there must be paid in each calendar year to each soil and water conservation district an amount not to exceed \$1 for each \$1 received from certain sources. Generally, such payments to one district cannot exceed \$8,000 in any calendar year. With respect to the sources from which moneys are received for purposes of this state matching aid, the act adds tax levies in excess of the ten-mill levy limitation approved for the benefit of local soil and water conservation districts. Thus, the act allows money from the tax levies to be matched and paid to the districts. (Sec. 1515.14.)

### **Contracts with townships for services**

Continuing law authorizes the board of township trustees of a township, by resolution, to enter into a contract, without advertising or bidding, for the purchase or sale of materials, equipment, or supplies from or to any department, agency, or political subdivision of the state or for the purchase of supplies, services, materials, and equipment with a regional planning commission. The act adds that a board of township trustees also may enter into such a contract for the purchase of services with a soil and water conservation district. (Sec. 505.101.)

Law retained by the act requires the resolution to: (1) set forth the maximum amount to be paid for the materials, equipment, or supplies, (2) describe the type of materials, equipment, or supplies that are to be purchased, and (3) appropriate sufficient funds to pay the purchase price for the materials, equipment, or supplies, except that no such appropriation is necessary if funds have been previously appropriated for the purpose and remain unencumbered at the time the resolution is adopted. The act makes a clarifying change in the requirements governing the resolution by including "services" with "materials, equipment, or supplies" in each instance. (Sec. 505.101(A), (B), and (C).)

### **Southern Ohio Agricultural and Community Development Foundation**

Continuing law creates the Southern Ohio Agricultural and Community Development Foundation to deal with certain issues involving tobacco production. The general management of the Foundation is vested in a board of trustees consisting of 16 members, including the Director of Agriculture and the Director of Development as ex officio officers. The act authorizes those Directors each to designate a person to serve on the board in their respective places. (Sec. 183.12.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-26-04	p. 1582
Reported, S. Agriculture	04-21-04	p. 1747
Passed Senate (33-0)	05-12-04	p. 1900
Reported, H. Agriculture & Natural Resources	12-01-04	pp. 2330-2331
Passed House (97-0)	12-08-04	pp. 2484-2485
Senate concurred on House amendments (29-0)	12-08-04	p. 2754

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