



County Engineers
Association of Ohio



THE OHIO DRAINAGE LAWS PETITION PROCEDURE

Ohio drainage laws are very broad in scope and apply to a wide variety of improvements. They are administered by the board of county commissioners and their purpose is to provide for the better utilization of Ohio's soil and water resources.



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AS WRITTEN BY BYRON NOLTE -
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WORK THAT MAY BE DONE

- The location, construction, reconditioning (cleaning), widening, deepening, straightening, alternating, boxing, tilling, walling, arching or any change in the course, location or terminus of any ditch, drain, watercourse or floodway.
- The deepening widening, straightening, or any change in the course, location or terminus of a river, creek or run.
- A levee, or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water.
- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run.
- The vacating of a ditch or drain.

Improvements may be planned, financed and constructed using the petition procedure or the mutual agreement procedure. In either case permanent maintenance is provided.

The area affected by an improvement may include all or part of one or more counties.

SINGLE COUNTY PETITION PROCEDURE

1. A petition is filed by an owner or a public body.
2. The proposed improvement is viewed by the board of county commissioners, the county engineer, and other interested parties.
3. The first hearing is held, and the county engineer files his or her preliminary reports, including a statement of his or her opinion as to whether benefits from the project are likely to exceed the estimated cost.
4. The county engineer makes surveys, plans and specifications for the improvements; prepares a schedule of assessments of benefits and damages; and files this information with the clerk of the board of county commissioners.
5. The final hearing is held. Any exceptions to the county engineer's schedules of benefits and damages must be filed on or before the date of the final hearing. The board hears evidence, amends, corrects, and approves assessments, and orders the engineer to let the contracts for construction.
6. The county engineer receives bids at the time fixed, if no appeal has been taken to the court of common pleas.
7. Upon completion of the contracts, the assessments are adjusted pro rata from the estimated to the final cost. This assessment, plus the maintenance cost for one year, is levied upon each parcel of land as stated in the schedules.
8. The improvement is maintained by the county with funds obtained by annual assessment upon the benefited owners.





WHO MAY PETITION

Any benefitted owner(s) may file a petition with the board of county commissioners to begin the legal steps necessary to finance, construct, and maintain an improvement.

“Owner” means any owner of any right, title, estate, or interest in or to real property. “Owner” also includes any public corporation and the director of any department, office, or institution of the state affected by an improvement, not owning any right, title, estate, or interest in or to real property.

FILING THE PETITION

Petitions are filed with the clerk of the board of county commissioners. The petition must state that the construction of the improvement is necessary and will be conducive to public welfare. It must also state the nature and location of the work being petitioned. It must contain a list of the names and addresses, where known, of all the owners of the land which the petitioner or county engineer claims will be benefitted or damaged by construction of the proposed improvement. The petition must be signed by one or more owners as petitioners.

A 1,500-dollar bond must be filed with the petition plus five dollars for each parcel of land in excess of 200 listed in the petition as being benefitted. The bond is released 30 days after the first hearing or at the termination of any appeal; however, if the petition is dismissed the bond is used to pay the cost of notices and any other incidental expenses and it may be used to pay the cost of the preliminary engineering report. If the petition is filed by a public body, no bond is required.

The petition may be amended upon written application of any benefiting owner filed with the clerk of the board of county commissioners, provided the board approves the application. The amendment may not be filed more than 21 days after the view and must include information [required in ORC 6131.04.]. An amendment may increase the length of the improvement, but not expand the area or add new parcels being benefitted. To construct an improvement that would expand the benefitted area or add new parcels to the benefitted area will require a new petition.

THE VIEW

The date, hour and place where the view will start must be set by the board of county commissioners. The date shall be 30 days to 120 days after the date on which the petition was filed with the clerk of the board of county commissioners. A notice giving the date, hour and place of view and content of the petition must be sent by certified mail and return receipt requested to the owners named in the petition and of legal record on the date the petition was filed.

The county engineer or the county engineer’s designated representative will present an overview of the proposed drainage improvements using means and methods that the board of county commissioners deem adequate inform the attendees.

The view gives the board of county commissioners and the county engineer an opportunity to gather field information about the proposed improvements. Also, any owner may present proof of how he or she will be affected by the proposed improvement. Upon a request by a property owner or a county commissioner, the board of county commissioners may recess the hearing in order to gather more information and reconvene the hearing. If the area is extensive, the board of county commissioners may adjourn from day to day until the view is complete.



THE FIRST HEARING

The date and hour of the first hearing will be given on the notice announcing the view. It must be 30 to 90 days after the date set for the view. The notice will also include a description of the proposed improvements, map of the proposed improvements or location where a map may be found and instructions on how to obtain additional information. The clerk will include the words "Legal Notice of Proposed Drainage Improvements" in the notice.

At the first hearing the county engineer must file a preliminary report including an estimate of cost, comments on feasibility of the project, and a statement of an opinion as to whether benefits from the project are likely to exceed the estimated project cost.

The board of county commissioners shall hear any evidence offered by any owner for or against the granting of the proposed improvement, or for any proposed changes in the improvement.

No change shall be made in the nature of the work proposed after the first hearing is completed, except upon application of an interested owner affected by the improvement, and upon notice given to all owners affected by the change.

If the board of county commissioners finds:

- That an improvement is necessary:
 - For disposal or removal of surplus water,
 - For controlled drainage of any land,
 - For irrigation,
 - For storage of water to regulate stream flow,
 - For prevention of overflow of any land in the county, or
- That the construction of the improvement will be conducive to the public welfare, and
- The cost of the proposed improvement will be less than the benefits conferred by its construction, it will grant the petition.

If the petition is not granted, it will be dismissed. Any owner who is affected by the dismissal may appeal to the court of common pleas of the county in which the petition is filed. If no appeal is filed within 21 days, the petitioner must pay all the costs incurred in such proceedings, and the bond will be released.

PLANS AND BENEFITS

The county engineer is responsible for making surveys, developing plans and estimating the costs of construction. The cost of construction includes the actual cost of construction, the costs of right-of-way, the cost of engineering, and the costs of notices, publications and other incidental expenses.

The route of improvements, to the extent practicable, will not cross any parcel diagonally, but follow property lines.

Plans are reviewed by the director of the Ohio Department of Natural Resources, the Ohio Department of Transportation (where a state highway is affected), and the director of any conservancy district within any part of the lands or streams affected by the proposed improvement. Each has 30 days to respond.





The plans shall provide for spreading and leveling of spoil banks and shall provide for erosion and sediment control through the establishment of a sod or seeded strip not less than ten or more than 15 feet wide measured at right angles to the top of the ditch. The strip shall be provided on both sides of the ditch, except where suitable vegetative cover exists. The strip or other erosion and sediment control measures shall be considered a part of the permanent improvement. Owners shall be compensated for sod or seeded strips wider than ten feet by their removal of that strip from the tax valuation of the property of which they are a part.

The county engineer shall estimate the benefits accruing to public corporations, any department, office, or institution of the state of Ohio and to private owners.

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

“Benefit” or “benefits” means advantages to land and owners, to public corporations as entities, and to the state of Ohio, resulting from drainage, conservation, control and management of water and environmental, wildlife, and recreational improvements. Factors relevant to whether such advantages result include:

- The watershed or entire land drained or affected by the improvement.
- The total volume of water draining into or through the improvement, and the amount of water contributed by each landowner.
- The use to be made of the improvement by any owner, public corporation, or the state of Ohio.

Also, benefits include any or all of the following factors:

- Elimination or reduction of damage from flood.
- Removal of water conditions that jeopardize public health, safety or welfare.
- Increased value of land resulting from the improvement.
- Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other purpose incidental thereto.
- Providing an outlet for the accelerated runoff from artificial drainage whenever the stream, watercourse, channel, or ditch under improvement is called upon to discharge functions for which it is not designed by nature, it being the legislative intent that uplands which have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other man-made causes will be considered as benefitted by an improvement required to dispose of the accelerated flow of water from said uplands.

The county engineer must estimate the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement. The total of these damages and valuations is included as part of the total cost of constructing the improvements.

The county engineer shall provide a property plat showing location of improvements, a statement describing the width of the permanent easement and provide an affidavit listing owners-of-record complete with property descriptions and parcel numbers affected by the easements. The county engineer shall also note the plat in the affidavit. The county engineer will include the easements on the county GIS system where practicable.



As an alternative to the schedule of easements, the board of commissioners may pass a resolution to levy a tax on all property listed and assessed for taxes in the county. The resolution must be certified to the county auditor 60 days before the election upon which it will be voted. The levy may be for a period of up to five years except where it is for the payment of debt charges the levy shall be for the life of the indebtedness.

At least 60 days prior to the passage of the resolution to levy a tax for construction and maintenance of a drainage improvement, the board of county commissioners shall file with the county auditor and county board of elections an accurate map showing the location and types of improvements, the area to be benefited and the existing system of drainage that is to be maintained. The resolution may designate all or part of the county as a drainage improvement district and the proceeds of the levy shall only be used within the district. The drainage improvement district designation shall be based on the location of the system of improvements and the areas to be benefitted by the system.

THE FINAL HEARING

Upon the filing by the county engineer of his or her reports and schedules, the board of county commissioners must fix a date from 25 to 90 days thereafter for the final hearing. The clerk for the board of county commissioners must give notice of the hearing by certified mail to all owners whose names appear in the engineer's schedule of assessments and damages no fewer than 21 days before the date set for the final hearing.

An owner may file an exception to the county engineer's schedule of assessments or file a claim for damages or compensation not less than five days before the final hearing. In filing the exception or claim for compensation, the owner must include the nature of the exception, the amount claimed, if any, and the identity of the property claimed to be taken or damaged.

The notice must include the date of the final hearing on the report of the engineer, the assessment of the estimated damages, if any, and compensation for any land or other property necessary to be taken. It also includes notification that all claims for compensation or damages must be filed with the clerk of the board of county commissioners before the date fixed for the final hearing.

At the final hearing the board of county commissioners will hear all the evidence offered and consider all schedules and reports filed by the county engineer. It will reaffirm its former order granting the petition or it shall set aside the former order and dismiss the petition.

If the petition is dismissed, at the final hearing, all costs in said proceedings, including the costs made by the engineer in making the surveys, reports, and schedules may be distributed to the benefitting owners or they may be paid from county funds. The petitioner, or any owner in favor of the improvement, may appeal within 21 days to the court of common pleas from such order of dismissal.

If the petition is not dismissed, the board of county commissioners will hear any evidence offered for or against the assessment proposed to be levied against any owner, or any land, as shown by the schedule of assessments filed by the county engineer and will hear any competent evidence on the question of the benefits. The board, from the evidence offered from an actual view of the premises, will amend and correct the assessments, and the assessments so amended will be approved by the board.





The board of county commissioners must determine when the assessments are to be paid and whether bonds are to be issued. Also, they will order the county engineer to let the contracts.

ASSESSMENTS

Assessments are levied on each parcel benefitted, to pay the cost of construction and maintenance of improvements. These assessments are paid in semi-annual installments as taxes are paid. When the county general funds are used to pay for the improvement, the assessment shall not exceed ten semi-annual installments. If bonds or notes are issued, the installments will include interest added at the rate of interest the bonds or notes bear. The bond repayment period may not exceed 16 semi-annual installments.

Any owner may pay the estimated assessment on his or her land in cash within 30 days after the final hearing without paying any interest. Notice of intent to pay in cash must be given within 21 days after the final hearing.

If the estimated cost of the improvement does not exceed 500 dollars not more than two semi-annual installments, as taxes are paid, will be given to owners of lands benefitted to pay the assessments that are made for such improvements. If the estimated cost of the improvement exceeds 500 dollars, the board may determine the number of installments in which the assessments are to be paid not to exceed 10 semi-annual installments.

If the assessment is 25 dollars or less, or whenever the unpaid balance of any such assessment is 25 dollars or less, the same will be paid in full and not in installments, at the time the first or next installment would otherwise be due.

Upon completion of the works of improvements, the assessments are reduced pro rata by the difference between the estimated cost and the final cost. The assessment will include the cost of location, engineering, compensation, damages, contingency, and the assessment for maintenance for one year. The minimum construction assessment is 10 dollars and the minimum maintenance assessment is two dollars.

The original schedule of benefit assessments upon owners for the construction of any improvement must be maintained by the county auditor as the permanent base for maintenance assessments.

In lieu of a permanent base, the county commissioners may by resolution levy assessments apportioned according to the tax value of benefitted property. Prior to the adoption of the resolution, the county commissioners shall give at least 10 day notice in a newspaper of general circulation of the time and place where the resolution will be considered. The commissioners shall hear all persons concerning the proposed levy, make any necessary adjustments and may then pass a resolution levying an assessment on benefitted property. Any owner so assessed may appeal to the court of common pleas the question of whether such assessment is levied according to benefits. Any increase or reduction of the assessments levied in this manner shall be made and at the regular six-year appraisal of all property in the county.

The legislative authority of a political subdivision may choose to pay the assessment of all parcels within the subdivision.

Maintenance assessments will be made as needed by the board of county commissioners upon substantial completion of the improvement and on or before the first day of July, in each year thereafter. Assessments will be the next succeeding tax duplicate, to be collected and paid as other special assessments are collected and paid.

Such maintenance assessments are to represent a percentage of estimated benefits as estimated by the engineer and found adequate by the board or joint board, except that in any year when a maintenance fund has an unencumbered balance equal to 20 percent of construction costs, the annual maintenance assessment is to be omitted.

After six such annual maintenance fund assessments have been made upon the owners benefitting from an improvement, the board of county commissioners must review the permanent base for maintenance fund assessments and may increase or decrease the respective benefit apportionments in accordance with changes in benefits that have occurred during the intervening six years. Then changes are made, the owners will be notified, and a hearing will be held.

At the end of six years from the date of the first review of the permanent base of maintenance assessments, and at six-year intervals thereafter, the board of county commissioners will again review such permanent.

Owners along a drainage improvement may form any advisory committee for the purpose of notifying the county engineer of needed repair and maintenance work. Any recommendations shall be submitted by May 1 of the year the work is needed. The engineer shall consider the committee's recommendations.

APPEALS

Any owner opposed to the granting of the petition, or any owner opposed to further proceedings in the improvement, or any owner who claims that the assessments levied against him or her is excessive, or is not in proportion to the benefits, may take an appeal to the court of common pleas. The minimum appeal bond is 500 plus two dollars for each parcel over 200.

If an appeal has been taken to the court of common pleas, no further steps will be taken until the final judgment, order, or decree upon any appeal is rendered by the court of common pleas.

If the judgment, order, or decree is in favor of the granting of improvement, the board will proceed with said improvement proceedings in compliance with such final judgment, order or decree, or from the point at which the court orders the board to proceed.

CONSTRUCTION

If no appeal has been taken to the court of common pleas, the engineer must proceed to receive the bids, determine the successful bidder and enter into contract for the construction of the improvement.

If appeals have been taken to the court of common pleas, they must be settled before the construction can begin.

Upon acceptance of the contract work, the engineer shall file with the county recorder a property plat showing the general location of the improvement and a statement describing the width of permanent easement for maintenance.



MAINTENANCE

The board of county commissioners must establish and maintain a fund for the repair, upkeep, and permanent maintenance of each improvement constructed under the provisions of the drainage laws.

Whenever the board from its own observation or the recommendation of the county engineer, or on the written complaint of any of the owners of lands subject to said maintenance assessment, has reason to believe such improvement is in need of repair or maintenance, it will, as a board or by the county engineer, make an inspection of the condition, and if it finds such need to exist, it will make an estimate of the cost of the necessary work and material required for the purpose.

The board will determine the most economic and expeditious method of maintenance and repair and cause the work to be done.

The county engineer has general charge and supervision of the repair and maintenance. The county engineer must make an inspection of the drainage improvements, and on or before the first day of June, in each year, must report to the board of county commissioners the condition of said drainage improvements and his or her estimate of the probable amount of funds required to repair and maintain them.

Persons who perform maintenance may go upon land abutting or adjoining drainage improvements as necessary. In the case of open ditches the area used must not be more than 25 feet from the top of bank, except in an emergency up to 75 feet may be used. For closed ditches (tile or pipe), not more than 80 feet centered on the ditch may be used.

When the performance of maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall be granted damages equal to the market value to be paid from the permanent maintenance fund established for the improvement.

Any owner may make application for reduction in his or her maintenance assessment due to the work he or she proposes on any portion of a public watercourse, or other improvement. Such application must be filed with the county engineer on or before the first day in May, in any year and must state the nature of the work to be done. The county engineer must recommend the per cent reduction of the maintenance assessment to be granted, if any. The board must either confirm or reject the allowances recommended by the county engineer.

The board of county commissioners may grant to any owner a reduction of not more than 50 percent of his or her annual maintenance assessment if such owner has filed with the county engineer a certificate of the board of supervisors of the soil and water conservation district of the county in which the land is located, certifying that the owner is following practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and erosion of sediment and silt into drainage channels. Such certificate will remain in effect until cancelled by the board of county commissioners. The county engineer will have the right to inspect the premises of any owner claiming assessment reduction due to soil and water conservation and to ask the soil and water conservation district for review of any certificate on file.

For an open ditch log-jam removal project within a wooded riparian corridor, a maintenance easement may be created from the top of the bank to twenty-five feet outside the edge of the wooded riparian corridor.

If the cleaning out or repair of an improvement is made necessary in whole or in part by the negligent acts or omissions of any owner, the board of county commissioners, after a hearing in accordance with provisions of the law, may add to the maintenance assessment of such negligent owner an additional repair assessment in an amount sufficient to rectify the damage.



MUTUAL AGREEMENT PROCEDURE

The mutual agreement procedure applies when one or more owners desire to join in the construction of an improvement and are willing to pay the cost of construction. There are several steps necessary to make an improvement.

1. The owner(s) involved submit to the clerk of the board of county commissioners the mutual agreement, plans approved by a registered professional engineer and schedules of construction for the improvement. These are reviewed by the county engineer. He or she may approve them or require amendments prior to approval.
2. The county engineer makes benefit assessment schedules for maintenance purposes. These assessments may include the cost of preparing the schedules.
3. The board of county commissioners hold a hearing on the maintenance assessment schedules. They hear evidence and may amend and correct and shall approve the schedules.
4. The owner(s) contract for the construction and pay the cost as provided in their mutual agreement. This cost includes the estimated cost of maintenance for one year.
5. The construction is inspected and certified to be in accordance with the plans. This must be done in a manner acceptable to the county engineer.
6. The improvements are maintained by the board of county commissioners with funds obtained by an annual assessment upon the benefited owners.



MULTI-COUNTY PROCEDURE

The primary difference between making improvements in one or two or more counties is in the group that conducts the proceedings. The procedure for the owner is essentially the same.

The petition for an improvement that is proposed to be located in, or benefits or damages land in one, two or more counties may be filed with the clerk of the board of county commissioners of the "Lead County" in where the majority of the initial length of a joint drainage improvement would be located as specified in the original petition.

The proceedings are conducted by a joint board of county commissioners consisting of the members of the boards of the several counties. One member of the joint board is elected president. The clerk of the board where the petition is filed acts as clerk of the joint board. It shall also be administered by the county, county recorder, county auditor, county prosecutor, common pleas judges, county treasurer of the lead county.

A majority of the joint board constitutes a quorum. All decisions of the joint board require a vote of the majority of the county commissioners of the joint board.

The director of the Ohio Department of Natural Resources is an ex-officio member of the joint board. He or she may attend in person through a designated representative. He or she may only vote in the case of a tie.

The clerk of the board of county commissioners with whom the petition is filed, calls a meeting of the joint board within 30 days after the petition is filed. The meeting is held in the county in which the petition is filed.

The joint board designates the engineer of the county with the majority of improvements to do the field work necessary to plan the improvement. The engineer of each county interested must assist in making the reports and schedules and must sign and approve them.

INTERSTATE PROCEDURES

Improvements may involve land in an adjoining state. The board of county commissioners in Ohio may cooperate with the proper authorities in the adjoining state to carry out the interstate improvement.

OUTSIDE ASSISTANCE

Federal and state laws provide for financial assistance on certain types of improvements. These require approval prior to construction. Application for assistance must be made well in advance in order to coordinate local action with the federal program.

Improvements may be planned and constructed in cooperation with federal and state agencies. If the regulations or procedures of the cooperating agency are in conflict with the Ohio drainage laws, the board of county commissioners may adopt the agency regulations or procedures and proceed with the improvement.

The board of county commissioners, with the advice of the county engineer may enter into agreements with local soil and water conservation districts for the purpose of planning, constructing, or maintaining drainage improvements.



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NOTE

This bulletin outlines the main provisions of the Ohio Drainage laws. It is not a complete legal guide. In specific cases direct reference should be made to the Ohio Revised Code Chapters 6131, 6133, 6135 and 6137. In many cases the help of a qualified attorney will be necessary.

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