

As Passed by the House

125th General Assembly

Regular Session

2003-2004

Sub. H. B. No. 411

Representatives Seitz, Collier, Niehaus, McGregor, Aslanides, Schneider,
Webster, Gilb, Wolpert, Schlichter, Sferra, Daniels, Flowers, Barrett, Boccieri,
Driehaus, C. Evans, Grendell, Otterman, Peterson, Raussen, Setzer, Ujvagi,
Yates

A BILL

To amend sections 163.02, 163.09, 163.12, 307.08, 1
307.79, 3709.41, 6117.012, 6117.39, 6117.51, and 2
6119.11 and to enact sections 6101.181 and 3
6115.221 of the Revised Code to allow a county, 4
conservancy district, sanitary district, county 5
sewer district, or regional water and sewer 6
district to appropriate, without a prior jury 7
assessment of compensation for the taking, land 8
for the construction of sewers when the Director 9
of Environmental Protection or a local board of 10
health finds that unsanitary conditions compel the 11
immediate construction of the sewers for the 12
protection of the public health and welfare; to 13
revise the rulemaking authority of a board of 14
county commissioners that adopts rules governing 15
erosion control, sediment control, and water 16
management; to establish a potential civil fine 17
for violation of those rules; to authorize a board 18
of county commissioners that has established a 19
county sewer district to adopt rules governing the 20
prevention of sewer back-ups; to exempt certain 21

farm dwellings from certain sewer connections; and 22
to require health district licensing councils to 23
meet at least annually rather than quarterly. 24

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 163.02, 163.09, 163.12, 307.08, 25
307.79, 3709.41, 6117.012, 6117.39, 6117.51, and 6119.11 be 26
amended and sections 6101.181 and 6115.221 of the Revised Code be 27
enacted to read as follows: 28

Sec. 163.02. (A) Except as provided in divisions (B), (C), 29
~~and (D), and (F)~~ of this section, all appropriations of real 30
property shall be made pursuant to sections 163.01 to 163.22 of 31
the Revised Code. 32

(B) Subject to division (E) of this section, the director of 33
transportation may appropriate real property pursuant to sections 34
163.01 to 163.22 of the Revised Code or as otherwise provided by 35
law. 36

(C) Subject to division (E) of this section, a conservancy 37
district may appropriate real property by procedures prescribed in 38
Chapter 6101. of the Revised Code. 39

(D) Subject to division (E) of this section, a sanitary 40
district may appropriate real property by procedures prescribed in 41
Chapter 6115. of the Revised Code. 42

(E) When the director of transportation, a conservancy 43
district, or a sanitary district proceeds to appropriate real 44
property other than under sections 163.01 to 163.22 of the Revised 45
Code, the proceedings are subject to division (B) of section 46
163.21 of the Revised Code. 47

(F) A county, conservancy district, sanitary district, county 48

sewer district, or a regional water and sewer district also may 49
appropriate real property in the manner prescribed in division (B) 50
of each section 307.08, 6101.181, 6115.221, 6117.39, or 6119.11 of 51
the Revised Code, respectively. 52

(G) Any instrument by which the state or an agency of the 53
state acquires real property pursuant to this section shall 54
identify the agency of the state that has the use and benefit of 55
the real property as specified in section 5301.012 of the Revised 56
Code. 57

Sec. 163.09. (A) If no answer is filed pursuant to section 58
163.08 of the Revised Code, ~~nor~~ and no approval ordered by the 59
court to a settlement of the rights of all necessary parties, the 60
court, on motion of a public agency, shall declare the value of 61
the property taken and the damages, if any, to the residue to be 62
as set forth in any document properly filed with the clerk of 63
~~courts~~ the court of common pleas by the public agency. In all 64
other cases, the court shall fix a time, within twenty days from 65
the last date that ~~such~~ the answer could have been filed, for the 66
assessment of compensation by a jury. 67

(B) When an answer is filed pursuant to section 163.08 of the 68
Revised Code and any of the matters relating to the right to make 69
the appropriation, the inability of the parties to agree, or the 70
necessity for the appropriation are specifically denied in the 71
manner provided in ~~such~~ that section, the court shall set a day, 72
not less than five or more than fifteen days from the date the 73
answer was filed, to hear ~~such questions~~ those matters. Upon ~~such~~ 74
~~questions~~ those matters, the burden of proof is upon the owner. A 75
resolution or ordinance of the governing or controlling body, 76
council, or board of the agency declaring the necessity for the 77
appropriation shall be prima-facie evidence of ~~such~~ that necessity 78
in the absence of proof showing an abuse of discretion by the 79

agency in determining ~~such~~ that necessity. If, as to any or all of 80
the property or other interests sought to be appropriated, the 81
court determines the ~~questions~~ matters in favor of the agency, the 82
court shall set a time for the assessment of compensation by the 83
jury within twenty days from the date of the journalization of 84
~~such~~ that determination. An order of the court in favor of the 85
agency on any of ~~such questions~~ the matters or on qualification 86
under section 163.06 of the Revised Code, shall not be a final 87
order for purposes of appeal. An order of the court against the 88
agency on any of ~~such questions~~, the matters or on the question of 89
qualification under section 163.06 of the Revised Code, shall be a 90
final order for purposes of appeal. If a public agency has taken 91
possession prior to such an order and such an order, after any 92
appeal, is against the agency on any of ~~such questions~~ the 93
matters, the agency shall restore the property to the owner in its 94
original condition or respond in damages, which may include the 95
items set forth in division (A)(2) of section 163.21 of the 96
Revised Code, recoverable by civil action, to which the state 97
consents. 98

(C) When an answer is filed pursuant to section 163.08 of the 99
Revised Code, and none of the matters set forth in division (B) of 100
this section is specifically denied, the court shall fix a time 101
within twenty days from the date the answer was filed for the 102
assessment of compensation by a jury. 103

(D) If answers are filed pursuant to divisions (B) and (C) of 104
this section, or an answer is filed on behalf of fewer than all 105
the named owners, the court shall set the hearing or hearings at 106
such times as are reasonable under all the circumstances, but in 107
no event later than twenty days after the issues are joined as to 108
all necessary parties or twenty days after rule therefor, 109
whichever is earlier. 110

(E) The court, with the consent of the parties, may order two 111

or more cases to be consolidated and tried together, but the 112
rights of each owner to compensation, damages, or both shall be 113
separately determined by the jury in its verdict. 114

(F) If an answer is filed under section 163.08 of the Revised 115
Code with respect to the value of property appropriated under 116
section 307.08, 6101.181, 6115.221, 6117.39, or 6119.11 of the 117
Revised Code as the result of a public exigency, the burden of 118
proof with respect to that value is on the party or parties to the 119
appropriation other than the property owners. 120

Sec. 163.12. (A) A view of the premises to be appropriated or 121
of premises appropriated shall be ordered by the court when 122
demanded by a party to the proceedings. The 123

(B) The property owners shall open and close the case except 124
that, if the premises are appropriated under section 307.08, 125
6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code as the 126
result of a public exigency, the party or parties other than the 127
owners shall open and close the case. 128

(C) The court may amend any defect or informality in 129
proceedings under sections 163.01 to 163.22, ~~inclusive,~~ of the 130
Revised Code. The court may cause new parties to be added, and 131
direct ~~such~~ further notice to be given to a party in interest as 132
the court ~~deems~~ considers proper. 133

(D) No part of the pleadings, other than the petition, shall 134
be read or exhibited to the jury. 135

Sec. 307.08. ~~When~~ (A) Except as provided in division (B) of 136
this section, when, in the opinion of the board of county 137
commissioners, it is necessary to procure real estate, a 138
right-of-way, or an easement for a courthouse, a jail, or public 139
offices, ~~or~~ for a bridge and the approaches ~~thereto~~ to it, or 140
~~either~~ for another structure, ~~or~~ public market place, or market 141

house, proceedings shall be had in accordance with sections 163.01 142
to 163.22, ~~inclusive~~, of the Revised Code. 143

(B)(1) For the purposes of division (B) of this section, 144
either of the following constitutes a public exigency: 145

(a) A finding by the director of environmental protection 146
that a public health nuisance caused by an occasion of unavoidable 147
urgency and suddenness due to unsanitary conditions compels the 148
immediate construction of sewers for the protection of the public 149
health and welfare; 150

(b) The issuance of an order by the board of health of a 151
health district to mitigate or abate a public health nuisance that 152
is caused by an occasion of unavoidable urgency and suddenness due 153
to unsanitary conditions and compels the immediate construction of 154
sewers for the protection of the public health and welfare. 155

(2) If the board of county commissioners is unable to 156
purchase property for the purpose of the construction of sewers to 157
mitigate or abate the public health nuisance that is the subject 158
of a finding of the director or an order of the board of health, 159
the board of county commissioners may adopt a resolution finding 160
that it is necessary for the protection of the public health and 161
welfare to appropriate property that the board of county 162
commissioners considers needed for that purpose. The resolution 163
shall contain a definite, accurate, and detailed description of 164
the property and the name and place of residence, if known or with 165
reasonable diligence ascertainable, of the owners of the property 166
to be appropriated. 167

The board of county commissioners shall fix in its resolution 168
what it considers to be the value of the property to be 169
appropriated, which shall be the board's determination of the 170
compensation for the property and shall be supported by an 171
independent appraisal, together with any damages to the residue. 172

The board shall deposit the compensation so determined, together 173
with an amount for the damages to the residue, with the probate 174
court or the court of common pleas of the county in which the 175
property, or a part of it, is situated. Except as otherwise 176
provided in this division, the power to appropriate property for 177
the purposes of this division shall be exercised in the manner 178
provided in sections 163.01 to 163.22 of the Revised Code for an 179
appropriation in time of public exigency. The board's resolution 180
and a written copy of the independent appraisal shall accompany 181
the petition filed under section 163.05 of the Revised Code. 182

Sec. 307.79. (A) The board of county commissioners may adopt, 183
amend, and rescind rules establishing technically feasible and 184
economically reasonable standards to achieve a level of management 185
and conservation practices ~~which~~ that will abate wind or water 186
erosion of the soil or abate the degradation of the waters of the 187
state by soil sediment in conjunction with land grading, 188
excavating, filling, or other soil disturbing activities on land 189
used or being developed for nonfarm commercial, industrial, 190
residential, or other nonfarm purposes, and establish criteria for 191
determination of the acceptability of ~~such~~ those management and 192
conservation practices. The rules shall be designed to implement 193
the applicable areawide wastetreatment management plan prepared 194
under section 208 of the "Federal Water Pollution Control Act," 86 195
Stat. 816 (1972), 33 U.S.C.A. 1228, as amended, and to implement 196
phase II of the storm water program of the national pollutant 197
discharge elimination system established in 40 C.F.R. Part 122. 198
The rules to implement phase II of the storm water program of the 199
national pollutant discharge elimination system shall not be 200
inconsistent with, more stringent than, or broader in scope than 201
the rules or regulations adopted by the environmental protection 202
agency under 40 C.F.R. Part 122. ~~Such~~ The rules adopted under this 203
section shall not apply inside the limits of municipal 204

corporations, to lands being used in a strip mine operation as 205
defined in section 1513.01 of the Revised Code, or to land being 206
used in a surface mine operation as defined in section 1514.01 of 207
the Revised Code. 208

The rules adopted under this section may require persons to 209
file plans governing erosion control, sediment control, and water 210
management ~~plans incident thereto,~~ before clearing, grading, 211
excavating, filling, or otherwise wholly or partially disturbing 212
~~five~~ one or more contiguous acres of land owned by one person or 213
operated as one development unit for the construction of nonfarm 214
buildings, structures, utilities, recreational areas, or other 215
similar nonfarm uses. ~~Areas~~ If the rules require plans to be 216
filed, the rules shall do all of the following: 217

(1) Designate the board itself, its employees, or another 218
agency or official to review and approve or disapprove the plans; 219

(2) Establish procedures and criteria for the review and 220
approval or disapproval of the plans; 221

(3) Require the designated entity to issue a permit to a 222
person for the clearing, grading, excavating, filling, or other 223
project for which plans are approved and to deny a permit to a 224
person whose plans have been disapproved; 225

(4) Establish procedures for the issuance of the permits; 226

(5) Establish procedures under which a person may appeal the 227
denial of a permit. 228

Areas of less than ~~five~~ one contiguous ~~acres~~ acre shall not 229
be exempt from compliance with other provisions of this section or 230
rules adopted ~~pursuant to~~ under this section. The rules adopted 231
under this section may impose reasonable filing fees for plan 232
review, permit processing, and field inspections. 233

No permit or plan shall be required for a public highway, 234

transportation, or drainage improvement or maintenance ~~thereof~~ 235
project undertaken by a government agency or political subdivision 236
in accordance with a statement of its standard sediment control 237
policies that is approved by the board or the chief of the 238
division of soil and water ~~districts~~ conservation in the 239
department of natural resources. 240

~~The rules shall not apply inside the limits of municipal 241
corporations.~~ 242

(B) Rules or amendments may be adopted under this section 243
only after public ~~hearings~~ hearings at not fewer than two regular 244
sessions of the board. The board of county commissioners shall 245
cause to be published, in a newspaper of general circulation in 246
the county, notice of the public hearings, including time, date, 247
and place, once a week for two weeks immediately preceding the 248
hearings. The proposed rules or amendments shall be made available 249
by the board to the public at the board office or other location 250
indicated in the notice. The rules or amendments shall take effect 251
on the thirty-first day following the date of their adoption. 252

(C) The board of county commissioners may employ personnel, 253
to assist in the administration of this section and the rules 254
adopted under it. The board also, if the action does not conflict 255
with the rules, may delegate duties to review sediment control and 256
water management plans to its employees, and may enter into 257
agreements with one or more political subdivisions, other county 258
officials, or other government agencies, in any combination, in 259
order to obtain reviews and comments on ~~such~~ plans governing 260
erosion control, sediment control, and water management or to 261
obtain other services for the administration of the rules adopted 262
under this section. 263

(D) The board of county commissioners or any duly authorized 264
representative of the board may, upon identification to the owner 265
or person in charge, enter any land upon obtaining agreement with 266

the owner, tenant, or manager ~~thereof~~ of the land in order to 267
determine whether there is compliance with the rules adopted under 268
this section. If the board or its duly authorized representative 269
is unable to obtain such an agreement, the board or representative 270
may apply for, and a judge of the court of common pleas for the 271
county where the land is located may issue, an appropriate 272
inspection warrant as necessary to achieve the purposes of this 273
chapter. 274

(E)(1) If the board of county commissioners or its duly 275
authorized representative determines that a violation of the rules 276
adopted under this section exists ~~and requests,~~ the board or 277
representative shall authorize the issuance of a notice of 278
violation. If, after a period of not less than thirty days has 279
elapsed following the issuance of the notice of violation, the 280
violation continues, the board or its duly authorized 281
representative shall issue a second notice of violation. Except as 282
provided in division (E)(3) of this section, if, after a period of 283
not less than fifteen days has elapsed following the issuance of 284
the second notice of violation, the violation continues, the board 285
or its duly authorized representative may issue a stop work order 286
if the violator failed to get any federal, state, or local permit 287
necessary for sediment and erosion control, earth movement, 288
clearing, or cut and fill activities, or may issue a stop work 289
order after first obtaining the written approval of the 290
prosecuting attorney of the county if, in the opinion of the 291
prosecuting attorney, the violation is egregious. 292

Once a stop work order is issued, the board or its duly 293
authorize representative shall request, in writing, the 294
prosecuting attorney of the county ~~in writing, the prosecuting~~ 295
~~attorney shall~~ to seek an injunction or other appropriate relief 296
in the court of common pleas to abate excessive erosion or 297
sedimentation and secure compliance with the rules adopted under 298

this section. ~~It~~ If the prosecuting attorney seeks an injunction 299
or other appropriate relief, then, in granting relief, the court 300
of common pleas may order the construction of sediment control 301
improvements or implementation of other control measures and may 302
assess a civil fine of not less than one hundred or more than five 303
hundred dollars. Each day of violation of a rule or stop work 304
order issued under this section shall be considered a separate 305
violation subject to a civil fine. 306

(2) The person to whom a stop work order is issued under this 307
section may appeal the order to the court of common pleas of the 308
county in which it was issued, seeking any equitable or other 309
appropriate relief from that order. 310

(3) No stop work order shall be issued under this section 311
against any public highway, transportation, or drainage 312
improvement or maintenance project undertaken by a government 313
agency or political subdivision in accordance with a statement of 314
its standard sediment control policies that is approved by the 315
board or the chief of the division of soil and water conservation 316
in the department of natural resources. 317

(F) No person shall violate any rule adopted or order issued 318
under this section. Notwithstanding division (E) of this section, 319
if the board of county commissioners determines that a violation 320
of any rule adopted or administrative order issued under this 321
section exists, the board may request, in writing, the prosecuting 322
attorney of the county to seek an injunction or other appropriate 323
relief in the court of common pleas to abate excessive erosion or 324
sedimentation and secure compliance with the rules or order. In 325
granting relief, the court of common pleas may order the 326
construction of sediment control improvements or implementation of 327
other control measures and may assess a civil fine of not less 328
than one hundred or more than five hundred dollars. Each day of 329
violation of a rule adopted or administrative order issued under 330

this section shall be considered a separate violation subject to a 331
civil fine. 332

Sec. 3709.41. (A) There is hereby created in each city and in 333
each general health district a health district licensing council, 334
to be appointed by the entity that has responsibility for 335
appointing the board of health in the health district. The members 336
of the ~~health district licensing~~ council shall consist of one 337
representative of each business activity for which the board of 338
health operates a licensing program. To be appointed and remain a 339
member, an individual ~~must~~ shall be a resident of the health 340
district for which the council was created. 341

The appointing authority shall make initial appointments to 342
the council not later than thirty days after ~~the effective date of~~ 343
~~this section~~ November 21, 2001. Of the initial appointments to the 344
council, one-third of the members, rounded to the nearest whole 345
number, shall serve for a term ending three years after ~~the~~ 346
~~effective date of this section~~ November 21, 2001; one-third, 347
rounded to the nearest whole number, shall serve for a term ending 348
four years after ~~the effective date of this section~~ November 21, 349
2001; and the remaining members shall serve for a term ending five 350
years after ~~the effective date of this section~~ November 21, 2001. 351
Thereafter, terms of office shall be five years, with each term 352
ending on the same day of the same month as did the term that it 353
succeeds. 354

Each member shall hold office from the date of the member's 355
appointment until the end of the term for which the member was 356
appointed. Members may be reappointed. 357

Vacancies shall be filled in the manner provided for original 358
appointments. Any member appointed to fill a vacancy occurring 359
prior to the expiration of the term for which the member's 360
predecessor was appointed shall hold office as a member for the 361

remainder of that term. A member shall continue in office 362
subsequent to the expiration date of the member's term until the 363
member's successor takes office or until a period of sixty days 364
has elapsed, whichever occurs first. 365

~~Members of a health district licensing council~~ shall serve 366
without compensation, except to the extent that serving on the 367
council is part of their regular duties of employment. 368

(B) Each health district licensing council shall organize by 369
selecting from among its members a chairperson, a secretary, and 370
any other officers it considers necessary. Each council shall 371
adopt bylaws for the regulation of its affairs and the conduct of 372
its business. 373

Each council shall meet at least ~~quarterly~~ annually or at 374
more frequent intervals if specified in its bylaws. In addition to 375
the mandatory meetings, a council shall meet at the call of the 376
chairperson or the request of a majority of the council members. 377

(C) Pursuant to sections 3709.03, 3709.05, and 3709.07 of the 378
Revised Code, the health district licensing council shall appoint 379
one of its members to serve as a member of the board of health. 380
The council shall appoint one of its members to serve as an 381
alternate board of health member if for any reason the original 382
member is required to abstain from voting on a particular issue 383
being considered by the board of health. While serving on behalf 384
of the original member, the alternate member has the same powers 385
and duties as the original member. 386

Sec. 6101.181. (A) For the purposes of this section, either 387
of the following constitutes a public exigency: 388

(1) A finding by the director of environmental protection 389
that a public health nuisance caused by an occasion of unavoidable 390
urgency and suddenness due to unsanitary conditions compels the 391

immediate construction of sewers for the protection of the public 392
health and welfare; 393

(2) The issuance of an order by the board of health of a 394
health district to mitigate or abate a public health nuisance that 395
is caused by an occasion of unavoidable urgency and suddenness due 396
to unsanitary conditions and compels the immediate construction of 397
sewers for the protection of the public health and welfare. 398

(B) If the board of directors of a conservancy district is 399
unable to purchase property for the purpose of the construction of 400
sewers to mitigate or abate the public health nuisance that is the 401
subject of a finding of the director or an order of the board of 402
health, the board of directors may adopt a resolution finding that 403
it is necessary for the protection of the public health and 404
welfare to appropriate property that the board of directors 405
considers needed for that purpose. The resolution shall contain a 406
definite, accurate, and detailed description of the property and 407
the name and place of residence, if known or with reasonable 408
diligence ascertainable, of the owners of the property to be 409
appropriated. 410

The board of directors shall fix in its resolution what it 411
considers to be the value of the property to be appropriated, 412
which shall be the board's determination of the compensation for 413
the property and shall be supported by an independent appraisal, 414
together with any damages to the residue. The board shall deposit 415
the compensation so determined, together with an amount for the 416
damages to the residue, with the probate court or the court of 417
common pleas of the county in which the property, or a part of it, 418
is situated. Except as otherwise provided in this division, the 419
power to appropriate property for the purposes of this division 420
shall be exercised in the manner provided in sections 163.01 to 421
163.22 of the Revised Code for an appropriation in the time of 422
public exigency. The board's resolution and a written copy of the 423

independent appraisal shall accompany the petition filed under
section 163.05 of the Revised Code.

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Sec. 6115.221. (A) For the purposes of this section, either
of the following constitutes a public exigency:

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(1) A finding by the director of environmental protection
that a public health nuisance caused by an occasion of unavoidable
urgency and suddenness due to unsanitary conditions compels the
immediate construction of sewers for the protection of the public
health and welfare;

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(2) The issuance of an order by the board of health of a
health district to mitigate or abate a public health nuisance that
is caused by an occasion of unavoidable urgency and suddenness due
to unsanitary conditions and compels the immediate construction of
sewers for the protection of the public health and welfare.

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(B) If the board of directors of a sanitary district is
unable to purchase property for the purpose of the construction of
sewers to mitigate or abate the public health nuisance that is the
subject of a finding of the director or an order of the board of
health, the board of directors may adopt a resolution finding that
it is necessary for the protection of the public health and
welfare to appropriate property that the board of directors
considers needed for that purpose. The resolution shall contain a
definite, accurate, and detailed description of the property and
the name and place of residence, if known or with reasonable
diligence ascertainable, of the owners of the property to be
appropriated.

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The board of directors shall fix in its resolution what it
considers to be the value of the property to be appropriated,
which shall be the board's determination of the compensation for
the property and shall be supported by an independent appraisal,

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together with any damages to the residue. The board shall deposit
the compensation so determined, together with an amount for the
damages to the residue, with the probate court or the court of
common pleas of the county in which the property, or a part of it,
is situated. Except as otherwise provided in this division, the
power to appropriate property for the purposes of this division
shall be exercised in the manner provided in sections 163.01 to
163.22 of the Revised Code for an appropriation in time of public
exigency. The board's resolution and a written copy of the
independent appraisal shall accompany the petition filed under
section 163.05 of the Revised Code.

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Sec. 6117.012. (A) A board of county commissioners may adopt
rules requiring owners of property within the district whose
property is served by a connection to sewers maintained and
operated by the board or to sewers that are connected to
interceptor sewers maintained and operated by the board to do any
of the following:

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(1) Disconnect stormwater inflows to sanitary sewers
maintained and operated by the board and not operated as a
combined sewer, or to connections with ~~such~~ those sewers;

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(2) Disconnect non-stormwater inflows to stormwater sewers
maintained and operated by the board and not operated as a
combined sewer, or to connections with ~~such~~ those sewers;

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(3) Reconnect or relocate any such disconnected inflows in
compliance with board rules and applicable building codes, health
codes, or other relevant codes;

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(4) Prevent sewer back-ups into properties that have
experienced one or more overflows of sanitary or combined sewers
maintained and operated by the board.

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(B) Any inflow required to be disconnected or any sewer

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back-up required to be prevented under a rule adopted pursuant to 484
division (A) of this section constitutes a nuisance subject to 485
injunctive relief and abatement pursuant to Chapter 3767. of the 486
Revised Code or as otherwise permitted by law. 487

(C) A board of county commissioners may use sewer district 488
funds; county general fund moneys; and, to the extent permitted by 489
their terms, loans, grants, or other moneys from appropriate state 490
or federal funds, for either of the following: 491

(1) The cost of disconnections, reconnections, ~~or~~ 492
relocations, or sewer back-up prevention required by rules adopted 493
pursuant to division (A) of this section, performed by the county 494
or under contract with the county; 495

(2) Payments to the property owner or a contractor hired by 496
the property owner pursuant to a competitive process established 497
by district rules, for the cost of disconnections, reconnections, 498
~~or~~ relocations, or sewer back-up prevention required by rules 499
adopted pursuant to division (A) of this section after the board, 500
pursuant to its rules, has approved the work to be performed and 501
after the county has received from the property owner a statement 502
releasing the county from all liability in connection with the 503
disconnections, reconnections, ~~or~~ relocations, or sewer back-up 504
prevention. 505

(D) Except as provided in division (E) of this section, the 506
board of county commissioners shall require in its rules regarding 507
disconnections, reconnections, or relocations of sewers or sewer 508
back-up prevention the reimbursement of moneys expended pursuant 509
to division (C) of this section by either of the following 510
methods: 511

(1) A charge to the property owner in the amount of the 512
payment made pursuant to division (C) of this section for 513
immediate payment or payment in installments with interest as 514

determined by the board not to exceed ten per cent, which payments 515
may be billed as a separate item with the rents charged to that 516
owner for use of the sewers. The board may approve installment 517
payments for a period of not more than fifteen years. If charges 518
are to be paid in installments, the board shall certify to the 519
county auditor information sufficient to identify each subject 520
parcel of property, the total of the charges to be paid in 521
installments, and the total number of installments to be paid. The 522
auditor shall record the information in the sewer improvement 523
record until these charges are paid in full. Charges not paid when 524
due shall be certified to the county auditor, who shall place the 525
charges upon the real property tax list and duplicate against that 526
property. ~~Such~~ Those charges shall be a lien on the property from 527
the date they are placed on the tax list and duplicate and shall 528
be collected in the same manner as other taxes. 529

(2) A special assessment levied against the property, payable 530
in ~~such~~ the number of years ~~as~~ the board determines, not to exceed 531
fifteen years, with interest as determined by the board not to 532
exceed ten per cent. The board ~~of county commissioners~~ shall 533
certify the assessments to the county auditor, stating the amount 534
and time of payment. The auditor shall record the information in 535
the county sewer improvement record, showing separately the 536
assessments to be collected, and shall place the assessments upon 537
the real property tax list and duplicate for collection. ~~Such~~ 538
~~assessment~~ The assessments shall be a lien on the property from 539
the date ~~it is~~ they are placed on the tax list and duplicate and 540
shall be collected in the same manner as other taxes. 541

(E) The county may adopt a resolution specifying a maximum 542
amount of the cost of any disconnection, reconnection, ~~or~~ 543
relocation, or sewer back-up prevention required pursuant to 544
division (A) of this section that may be paid by the county for 545
each affected parcel of property without requiring reimbursement. 546

~~Such~~ That amount may be allowed only if there is a building code, 547
health code, or other relevant code, or a federally imposed or 548
state-imposed consent decree that is filed or otherwise recorded 549
in a court of competent jurisdiction, applicable to the affected 550
parcel that prohibits in the future any inflows or sewer back-ups 551
not allowed under rules adopted pursuant to division (A)(1) or (4) 552
of this section. The board, by rule, shall establish criteria for 553
determining how much of the maximum amount for each qualifying 554
parcel need not be reimbursed. 555

(F) Disconnections, reconnections, ~~or~~ relocations, or sewer 556
back-up prevention required under this section ~~that are~~ and 557
performed by a contractor under contract with the property owner 558
shall not be considered a "public improvement", and those 559
performed by the county shall be considered a "public improvement" 560
as defined in section 4115.03 of the Revised Code. 561

Disconnections, reconnections, ~~or~~ relocations, or sewer 562
back-up prevention required under this section performed by a 563
contractor under contract with the property owner shall not be 564
subject to competitive bidding or public bond laws. 565

(G) Property owners shall be responsible for maintaining any 566
improvements made on private property to reconnect or relocate 567
disconnected inflows or for sewer back-up prevention pursuant to 568
this section unless a public easement exists for the county to 569
maintain that improvement. 570

Sec. 6117.39. ~~Whenever~~ (A) Except as provided in division (B) 571
of this section, whenever, in the opinion of the board of county 572
commissioners, it is necessary to acquire real estate or any 573
interest in real estate for the acquisition, construction, 574
maintenance, or operation of any sewer, drainage, or other 575
improvement authorized by this chapter, or to acquire the right to 576
construct, maintain, and operate the sewer, drainage, or other 577

improvement in and upon any property within or outside of a county sewer district, it may purchase the real estate, interest in real estate, or right by negotiation. If the board and the owner of the real estate, interest in real estate, or right are unable to agree upon its purchase and sale, or the amount of damages to be awarded for it, the board may appropriate the real estate, interest, or right in accordance with sections 163.01 to 163.22 of the Revised Code, except that the board, in the exercise of the powers granted by this section or any other section of this chapter, may not appropriate real estate or personal property owned by a municipal corporation.

(B)(1) For the purposes of division (B) of this section, either of the following constitutes a public exigency:

(a) A finding by the director of environmental protection that a public health nuisance caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions compels the immediate construction of sewers for the protection of the public health and welfare;

(b) The issuance of an order by the board of health of a health district to mitigate or abate a public health nuisance that is caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions and compels the immediate construction of sewers for the protection of the public health and welfare.

(2) If the board of county commissioners is unable to purchase property for the purpose of the construction of sewers to mitigate or abate the public health nuisance that is the subject of a finding of the director or an order of the board of health, the board of county commissioners may adopt a resolution finding that it is necessary for the protection of the public health and welfare to appropriate property that the board of county commissioners considers needed for that purpose. The resolution

shall contain a definite, accurate, and detailed description of
the property and the name and place of residence, if known or with
reasonable diligence ascertainable, of the owners of the property
to be appropriated.

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The board of county commissioners shall fix in its resolution
what it considers to be the value of the property to be
appropriated, which shall be the board's determination of the
compensation for the property and shall be supported by an
independent appraisal, together with any damages to the residue.
The board shall deposit the compensation so determined, together
with an amount for the damages to the residue, with the probate
court or the court of common pleas of the county in which the
property, or a part of it, is situated. Except as otherwise
provided in this division, the power to appropriate property for
the purposes of this division shall be exercised in the manner
provided in sections 163.01 to 163.22 of the Revised Code for an
appropriation in the time of public exigency. The board's
resolution and a written copy of the independent appraisal shall
accompany the petition filed under section 163.05 of the Revised
Code.

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Sec. 6117.51. If the board of health of the health district
within which a new public sewer construction project is proposed
or located passes a resolution stating that the reason for the
project is to reduce or eliminate an existing health problem or a
hazard of water pollution, the board of county commissioners of
the county, by resolution, may order the owner of any premises
located in a sewer district in the county, the owner's agent,
lessee, or tenant, or any other occupant of the premises to
connect the premises to the sewer for the purpose of discharging
sewage or other waste that the board determines is originating on
the premises, to make use of the connection, and to cease the

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discharge of the sewage or other waste into a cesspool, ditch, 640
private sewer, privy, septic tank, semipublic disposal system as 641
defined in division (B)(1)(a) of section 3709.085 of the Revised 642
Code, or other outlet if the board finds that the sewer is 643
available for use and is accessible to the premises following a 644
determination and certification to the board by a registered 645
professional engineer designated by it as to the availability and 646
accessibility of the sewer. This section does not apply to any of 647
the following: 648

(A) Any discharge authorized by a permit issued under 649
division (J) of section 6111.03 of the Revised Code other than a 650
discharge to or from a semipublic disposal system as defined in 651
division (B)(1)(a) of section 3709.085 of the Revised Code; 652

(B) Wastes resulting from the keeping of animals; 653

(C) Any premises that are not served by a common sewage 654
collection system when the foundation wall of the structure from 655
which sewage or other waste originates is more than two hundred 656
feet from the nearest boundary of the right_of_way within which 657
the sewer is located; 658

(D) Any premises that are served by a common sewage 659
collection system when both the foundation wall of the structure 660
from which the sewage or other waste originates and the common 661
sewage collection system are more than two hundred feet from the 662
nearest boundary of the right-of-way within which the public sewer 663
is located; 664

(E) Any dwelling house located on property that is listed on 665
the county's agricultural land tax list as being valued for tax 666
purposes as land devoted exclusively to agricultural use under 667
section 5713.31 of the Revised Code, when the foundation wall of 668
the dwelling house is two hundred feet or less from the nearest 669
boundary of the right-of-way within which the sewer is located, if 670

both of the following also apply:

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(1) The sewer right-of-way for the property on which the dwelling house is located was obtained by appropriation due to a public exigency pursuant to division (B) of each section 307.08, 6101.181, 6115.211, 6117.39, or 6119.11 of the Revised Code.

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(2) The local health department has certified that the household sewage disposal system is functioning properly.

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The board shall not direct an order under this section to a resident tenant unless it determines that the terms of the tenancy are such that the owner lacks sufficient rights of access to permit the owner to comply with the terms of the order.

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An owner, agent, lessee, tenant, or occupant shall comply with the order of the board within ninety days after the completion of service of the order upon that person as provided in this section. The board, upon written application filed prior to the expiration of the ninety-day period, may waive compliance with any order either temporarily or permanently and conditionally or unconditionally.

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In its resolution, the board shall direct its clerk, or the clerk's designee, to serve its order upon the owner, agent, lessee, tenant, or occupant. Service of the order shall be made personally, by leaving the order at the usual place of residence with a person of suitable age and discretion then residing therein, or by certified mail addressed to the owner, agent, lessee, tenant, or occupant at that person's last known address or to the address to which tax bills are sent. If it appears by the return of service or the return of the order forwarded by certified mail that the owner, agent, lessee, tenant, or occupant cannot be found, that person shall be served by publication of the order once in a newspaper of general circulation within the county, or if that person refuses service, that person shall be

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served by ordinary mail addressed to that person's last known 702
address or to the address to which tax bills are sent. The return 703
of the person serving the order or a certified copy of the return,
or a returned receipt for the order forwarded by certified mail, 704
accepted by the addressee or anyone purporting to act for the 705
addressee, is prima-facie evidence of the service of the order 706
under this section. The return of the person attempting to serve 707
the order, or the return to the sender of the order forwarded by 708
certified mail with an indication on the return of the refusal of 709
the addressee to accept delivery, is prima-facie evidence of the 710
refusal of service. 711
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No owner, agent, lessee, tenant, or occupant shall violate an 713
order issued under this section. Upon request of the board, the 714
prosecuting attorney shall prosecute in a court of competent 715
jurisdiction any owner, agent, lessee, tenant, or occupant who 716
violates an order issued under this section. Each day that a 717
violation continues after conviction for the violation of an order 718
issued under this section and the final determination thereof is a 719
separate offense. The court, for good cause shown, may grant a 720
reasonable additional period of time for compliance after 721
conviction. 722

Any owner, agent, lessee, tenant, or occupant violating an 723
order issued under this section also may be enjoined from 724
continuing in violation. Upon request of the board, the 725
prosecuting attorney shall bring an action in a court of competent 726
jurisdiction for an injunction against the owner, agent, lessee,
tenant, or occupant violating an order. 727
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The Ohio water development authority created under section 729
6121.02 of the Revised Code, in addition to its other powers, has 730
the same power and shall be governed by the same procedures in a 731
waste water facilities service area, or in any area adjacent to a 732
public sewer operated by the authority, as a board of county 733

commissioners in a county sewer district under this section, 734
except that the authority shall act by order, and the attorney 735
general, upon request of the authority, shall prosecute any person 736
who violates an order of the authority issued under this section. 737

Sec. 6119.11. The (A) Except as provided in division (B) of 738
this section, the board of trustees of a regional water and sewer 739
district may condemn for the use of the district any public or 740
private land, easement, rights, rights_of_way, franchises, or 741
other property within or without the district required by it for 742
the accomplishment of its purposes according to the procedure set 743
forth in sections 163.01 to 163.22, inclusive, of the Revised 744
Code. 745

(B)(1) For the purposes of division (B) of this section, 746
either of the following constitutes a public exigency: 747

(a) A finding by the director of environmental protection 748
that a public health nuisance caused by an occasion of unavoidable 749
urgency and suddenness due to unsanitary conditions compels the 750
immediate construction of sewers for the protection of the public 751
health and welfare; 752

(b) The issuance of an order by the board of health of a 753
health district to mitigate or abate a public health nuisance that 754
is caused by an occasion of unavoidable urgency and suddenness due 755
to unsanitary conditions and compels the immediate construction of 756
sewers for the protection of the public health and welfare. 757

(2) If the board of trustees of a regional water and sewer 758
district is unable to purchase property for the purpose of the 759
construction of sewers to mitigate or abate the public health 760
nuisance that is the subject of a finding of the director or an 761
order of the board of health, the board of trustees may adopt a 762
resolution finding that it is necessary for the protection of the 763
public health and welfare to appropriate property that the board 764

of trustees considers needed for that purpose. The resolution 765
shall contain a definite, accurate, and detailed description of 766
the property and the name and place of residence, if known or with 767
reasonable diligence ascertainable, of the owners of the property 768
to be appropriated. 769

The board of trustees shall fix in its resolution what it 770
considers to be the value of the property to be appropriated, 771
which shall be the board's determination of the compensation for 772
the property and shall be supported by an independent appraisal, 773
together with any damages to the residue. The board shall deposit 774
the compensation so determined, together with an amount for the 775
damages to the residue, with the probate court or the court of 776
common pleas of the county in which the property, or a part of it, 777
is situated. Except as otherwise provided in this division, the 778
power to appropriate property for the purposes of this division 779
shall be exercised in the manner provided in sections 163.01 to 780
163.22 of the Revised Code for an appropriation in the time of 781
public exigency. The board's resolution and a written copy of the 782
independent appraisal shall accompany the petition filed under 783
section 163.05 of the Revised Code. 784

Section 2. That existing sections 163.02, 163.09, 163.12, 785
307.08, 307.79, 3709.41, 6117.012, 6117.39, 6117.51, and 6119.11 786
of the Revised Code are hereby repealed. 787