

**As Reported by the House County and Township Government  
Committee**

**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**

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**A B I L L**

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 Code with respect to the value of property appropriated under section 307.08, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code as the result of a public exigency, the burden of proof with respect to that value is on the party or parties to the appropriation other than the property owners. 115  
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**Sec. 163.12.** (A) A view of the premises to be appropriated or of premises appropriated shall be ordered by the court when demanded by a party to the proceedings. ~~The~~ 121  
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(B) The property owners shall open and close the case except that, if the premises are appropriated under section 307.08, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code as the result of a public exigency, the party or parties other than the owners shall open and close the case. 124  
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(C) The court may amend any defect or informality in proceedings under sections 163.01 to 163.22, ~~inclusive,~~ of the Revised Code. The court may cause new parties to be added, and direct ~~such~~ further notice to be given to a party in interest as the court ~~deems~~ considers proper. 129  
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(D) No part of the pleadings, other than the petition, shall be read or exhibited to the jury. 134  
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**Sec. 307.08.** ~~when~~ (A) Except as provided in division (B) of this section, when, in the opinion of the board of county commissioners, it is necessary to procure real estate, a right-of-way, or an easement for a courthouse, a jail, or public offices, ~~or~~ for a bridge and the approaches ~~thereto~~ to it, or ~~either for another~~ structure, ~~or~~ public market place, or market house, proceedings shall be had in accordance with sections 163.01 to 163.22, ~~inclusive,~~ of the Revised Code. 136  
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(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 waste treatment 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 ~~hearing~~ 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. ~~¶~~ 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 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. 394  
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(B) If the board of directors of a conservancy 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. 399  
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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, 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. 411  
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Sec. 6115.221. (A) For the purposes of this section, either 426  
of the following constitutes a public exigency: 427

(1) A finding by the director of environmental protection 428  
that a public health nuisance caused by an occasion of unavoidable 429  
urgency and suddenness due to unsanitary conditions compels the 430  
immediate construction of sewers for the protection of the public 431  
health and welfare; 432

(2) The issuance of an order by the board of health of a 433  
health district to mitigate or abate a public health nuisance that 434  
is caused by an occasion of unavoidable urgency and suddenness due 435  
to unsanitary conditions and compels the immediate construction of 436  
sewers for the protection of the public health and welfare. 437

(B) If the board of directors of a sanitary district is 438  
unable to purchase property for the purpose of the construction of 439  
sewers to mitigate or abate the public health nuisance that is the 440  
subject of a finding of the director or an order of the board of 441  
health, the board of directors may adopt a resolution finding that 442  
it is necessary for the protection of the public health and 443  
welfare to appropriate property that the board of directors 444  
considers needed for that purpose. The resolution shall contain a 445  
definite, accurate, and detailed description of the property and 446  
the name and place of residence, if known or with reasonable 447  
diligence ascertainable, of the owners of the property to be 448  
appropriated. 449

The board of directors shall fix in its resolution what it 450  
considers to be the value of the property to be appropriated, 451  
which shall be the board's determination of the compensation for 452  
the property and shall be supported by an independent appraisal, 453  
together with any damages to the residue. The board shall deposit 454  
the compensation so determined, together with an amount for the 455  
damages to the residue, with the probate court or the court of 456

common pleas of the county in which the property, or a part of it, 457  
is situated. Except as otherwise provided in this division, the 458  
power to appropriate property for the purposes of this division 459  
shall be exercised in the manner provided in sections 163.01 to 460  
163.22 of the Revised Code for an appropriation in time of public 461  
exigency. The board's resolution and a written copy of the 462  
independent appraisal shall accompany the petition filed under 463  
section 163.05 of the Revised Code. 464

**Sec. 6117.012.** (A) A board of county commissioners may adopt 465  
rules requiring owners of property within the district whose 466  
property is served by a connection to sewers maintained and 467  
operated by the board or to sewers that are connected to 468  
interceptor sewers maintained and operated by the board to do any 469  
of the following: 470

(1) Disconnect stormwater inflows to sanitary sewers 471  
maintained and operated by the board and not operated as a 472  
combined sewer, or to connections with ~~such~~ those sewers; 473

(2) Disconnect non-stormwater inflows to stormwater sewers 474  
maintained and operated by the board and not operated as a 475  
combined sewer, or to connections with ~~such~~ those sewers; 476

(3) Reconnect or relocate any such disconnected inflows in 477  
compliance with board rules and applicable building codes, health 478  
codes, or other relevant codes; 479

(4) Prevent sewer back-ups into properties that have 480  
experienced one or more overflows of sanitary or combined sewers 481  
maintained and operated by the board. 482

(B) Any inflow required to be disconnected or any sewer 483  
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 578  
sewer district, it may purchase the real estate, interest in real 579  
estate, or right by negotiation. If the board and the owner of the 580

real estate, interest in real estate, or right are unable to agree 581  
upon its purchase and sale, or the amount of damages to be awarded 582  
for it, the board may appropriate the real estate, interest, or 583  
right in accordance with sections 163.01 to 163.22 of the Revised 584  
Code, except that the board, in the exercise of the powers granted 585  
by this section or any other section of this chapter, may not 586  
appropriate real estate or personal property owned by a municipal 587  
corporation. 588

(B)(1) For the purposes of division (B) of this section, 589  
either of the following constitutes a public exigency: 590

(a) A finding by the director of environmental protection 591  
that a public health nuisance caused by an occasion of unavoidable 592  
urgency and suddenness due to unsanitary conditions compels the 593  
immediate construction of sewers for the protection of the public 594  
health and welfare; 595

(b) The issuance of an order by the board of health of a 596  
health district to mitigate or abate a public health nuisance that 597  
is caused by an occasion of unavoidable urgency and suddenness due 598  
to unsanitary conditions and compels the immediate construction of 599  
sewers for the protection of the public health and welfare. 600

(2) If the board of county commissioners is unable to 601  
purchase property for the purpose of the construction of sewers to 602  
mitigate or abate the public health nuisance that is the subject 603  
of a finding of the director or an order of the board of health, 604  
the board of county commissioners may adopt a resolution finding 605  
that it is necessary for the protection of the public health and 606  
welfare to appropriate property that the board of county 607  
commissioners considers needed for that purpose. The resolution 608  
shall contain a definite, accurate, and detailed description of 609  
the property and the name and place of residence, if known or with 610  
reasonable diligence ascertainable, of the owners of the property 611

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  
discharge of the sewage or other waste into a cesspool, ditch,  
private sewer, privy, septic tank, semipublic disposal system as  
defined in division (B)(1)(a) of section 3709.085 of the Revised

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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: 671

(1) The sewer right-of-way for the property on which the 672

dwelling house is located was obtained by appropriation due to a 673  
public exigency pursuant to division (B) of each section 307.08, 674  
6101.181, 6115.211, 6117.39, or 6119.11 of the Revised Code. 675

(2) The local health department has certified that the 676  
household sewage disposal system is functioning properly. 677

The board shall not direct an order under this section to a 678  
resident tenant unless it determines that the terms of the tenancy 679  
are such that the owner lacks sufficient rights of access to 680  
permit the owner to comply with the terms of the order. 681

An owner, agent, lessee, tenant, or occupant shall comply 682  
with the order of the board within ninety days after the 683  
completion of service of the order upon that person as provided in 684  
this section. The board, upon written application filed prior to 685  
the expiration of the ninety-day period, may waive compliance with 686  
any order either temporarily or permanently and conditionally or 687  
unconditionally. 688

In its resolution, the board shall direct its clerk, or the 689  
clerk's designee, to serve its order upon the owner, agent, 690  
lessee, tenant, or occupant. Service of the order shall be made 691  
personally, by leaving the order at the usual place of residence 692  
with a person of suitable age and discretion then residing 693  
therein, or by certified mail addressed to the owner, agent, 694  
lessee, tenant, or occupant at that person's last known address or 695  
to the address to which tax bills are sent. If it appears by the 696  
return of service or the return of the order forwarded by 697  
certified mail that the owner, agent, lessee, tenant, or occupant 698  
cannot be found, that person shall be served by publication of the 699  
order once in a newspaper of general circulation within the 700  
county, or if that person refuses service, that person shall be 701  
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, 704  
or a returned receipt for the order forwarded by certified mail 705  
accepted by the addressee or anyone purporting to act for the 706  
addressee, is prima-facie evidence of the service of the order 707  
under this section. The return of the person attempting to serve 708  
the order, or the return to the sender of the order forwarded by 709  
certified mail with an indication on the return of the refusal of 710  
the addressee to accept delivery, is prima-facie evidence of the 711  
refusal of service. 712

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, 727  
tenant, or occupant violating an order. 728

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