

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 709

Representatives Rogers, Young

**Cosponsors: Representatives Seitz, Patterson, Manning, Fedor, Arndt, Antonio,
Sheehy**

A BILL

To amend sections 1710.01, 1710.02, and 1710.06 of 1
the Revised Code to authorize the creation of a 2
special improvement district to facilitate 3
shoreline improvements. 4

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

Section 1. That sections 1710.01, 1710.02, and 1710.06 of 5
the Revised Code be amended to read as follows: 6

Sec. 1710.01. As used in this chapter: 7

(A) "Special improvement district" means a special 8
improvement district organized under this chapter. 9

(B) "Church" means a fellowship of believers, 10
congregation, society, corporation, convention, or association 11
that is formed primarily or exclusively for religious purposes 12
and that is not formed for the private profit of any person. 13

(C) "Church property" means property that is described as 14
being exempt from taxation under division (A) (2) of section 15
5709.07 of the Revised Code and that the county auditor has 16

entered on the exempt list compiled under section 5713.07 of the Revised Code. 17
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(D) "Municipal executive" means the mayor, city manager, or other chief executive officer of the municipal corporation in which a special improvement district is located. 19
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(E) "Participating political subdivision" means the municipal corporation or township, or each of the municipal corporations or townships, that has territory within the boundaries of a special improvement district created under this chapter. 22
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(F) "Legislative authority of a participating political subdivision" means, with reference to a township, the board of township trustees. 27
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(G) "Public improvement" means the planning, design, construction, reconstruction, enlargement, or alteration of any facility or improvement, including the acquisition of land, for which a special assessment may be levied under Chapter 727. of the Revised Code, and includes any special energy improvement project or shoreline improvement project. 30
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(H) "Public service" means any service that can be provided by a municipal corporation or any service for which a special assessment may be levied under Chapter 727. of the Revised Code. 36
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(I) "Special energy improvement project" means any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photovoltaic project, a solar thermal energy project, a geothermal energy project, a customer-generated energy project, 40
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or an energy efficiency improvement, whether such real or 46
personal property is publicly or privately owned. 47

(J) "Existing qualified nonprofit corporation" means a 48
nonprofit corporation that existed before the creation of the 49
corresponding district under this chapter, that is composed of 50
members located within or adjacent to the district, that has 51
established a police department under section 1702.80 of the 52
Revised Code, and that is organized for purposes that include 53
acquisition of real property within an area specified by its 54
articles for the subsequent transfer of such property to its 55
members exclusively for charitable, scientific, literary, or 56
educational purposes, or holding and maintaining and leasing 57
such property; planning for and assisting in the development of 58
its members; providing for the relief of the poor and distressed 59
or underprivileged in the area and adjacent areas; combating 60
community deterioration and lessening the burdens of government; 61
providing or assisting others in providing housing for low- or 62
moderate-income persons; and assisting its members by the 63
provision of public safety and security services, parking 64
facilities, transit service, landscaping, and parks. 65

(K) "Energy efficiency improvement" means energy 66
efficiency technologies, products, and activities that reduce or 67
support the reduction of energy consumption, allow for the 68
reduction in demand, or support the production of clean, 69
renewable energy and that are or will be permanently fixed to 70
real property. 71

(L) "Customer-generated energy project" means a wind, 72
biomass, or gasification facility for the production of 73
electricity that meets either of the following requirements: 74

(1) The facility is designed to have a generating capacity 75

of two hundred fifty kilowatts of electricity or less.	76
(2) The facility is:	77
(a) Designed to have a generating capacity of more than two hundred fifty kilowatts of electricity;	78 79
(b) Operated in parallel with electric transmission and distribution facilities serving the real property at the site of the customer-generated energy project;	80 81 82
(c) Intended primarily to offset part or all of the facility owner's requirements for electricity at the site of the customer-generated energy project and is located on the facility owner's real property; and	83 84 85 86
(d) Not producing energy for direct sale by the facility owner to the public.	87 88
(M) "Reduction in demand" means a change in customer behavior or a change in customer-owned or operated assets that reduces or has the capability to reduce the demand for electricity as a result of price signals or other incentives.	89 90 91 92
(N) "Electric distribution utility" and "mercantile customer" have the same meanings as in section 4928.01 of the Revised Code.	93 94 95
(O) <u>"Shoreline improvement project" means acquiring, constructing, installing, equipping, improving, maintaining, or repairing real or tangible personal property necessary or useful to abate erosion along or otherwise improve any shoreline abutting waters located in this state.</u>	96 97 98 99 100
Sec. 1710.02. (A) A special improvement district may be created within the boundaries of any one municipal corporation, any one township, or any combination of contiguous municipal	101 102 103

corporations and townships for the purpose of developing and 104
implementing plans for public improvements and public services 105
that benefit the district. A district may be created by petition 106
of the owners of real property within the proposed district, or 107
by an existing qualified nonprofit corporation. If the district 108
is created by an existing qualified nonprofit corporation, the 109
purposes for which the district is created may be supplemental 110
to the other purposes for which the corporation is organized. 111
All territory in a special improvement district shall be 112
contiguous; except that the territory in a special improvement 113
district may be noncontiguous if at least one special energy 114
improvement project or shoreline improvement project is 115
designated for each parcel of real property included within the 116
special improvement district. Additional territory may be added 117
to a special improvement district created under this chapter for 118
the purpose of developing and implementing plans for special 119
energy improvement projects or shoreline improvement projects if 120
at least one special energy improvement project or shoreline 121
improvement project, respectively, is designated for each parcel 122
of real property included within such additional territory and 123
the addition of territory is authorized by the initial plan 124
proposed under division (F) of this section or a plan adopted by 125
the board of directors of the special improvement district under 126
section 1710.06 of the Revised Code. 127

The district shall be governed by the board of trustees of 128
a nonprofit corporation. This board shall be known as the board 129
of directors of the special improvement district. No special 130
improvement district shall include any church property, or 131
property of the federal or state government or a county, 132
township, or municipal corporation, unless the church or the 133
county, township, or municipal corporation specifically requests 134

in writing that the property be included within the district, or 135
unless the church is a member of the existing qualified 136
nonprofit corporation creating the district at the time the 137
district is created. A shoreline improvement project may extend 138
into the territory of Lake Erie, as described in section 1506.10 139
of the Revised Code, or into any other body of water located in 140
this state. However, if that territory is publicly owned, it 141
shall remain exempt from any special assessment that may be 142
levied under section 1710.06 and Chapter 727. of the Revised 143
Code. More than one district may be created within a 144
participating political subdivision, but no real property may be 145
included within more than one district unless the owner of the 146
property files a written consent with the clerk of the 147
legislative authority, the township fiscal officer, or the 148
village clerk, as appropriate. The area of each district shall 149
be contiguous; except that the area of a special improvement 150
district may be noncontiguous if all parcels of real property 151
included within such area contain at least one special energy 152
improvement or shoreline improvement thereon. 153

(B) Except as provided in division (C) of this section, a 154
district created under this chapter is not a political 155
subdivision. A district created under this chapter shall be 156
considered a public agency under section 102.01 and a public 157
authority under section 4115.03 of the Revised Code. Each member 158
of the board of directors of a district, each member's designee 159
or proxy, and each officer and employee of a district shall be 160
considered a public official or employee under section 102.01 of 161
the Revised Code and a public official and public servant under 162
section 2921.42 of the Revised Code. Districts created under 163
this chapter are not subject to sections 121.81 to 121.83 of the 164
Revised Code. Districts created under this chapter are subject 165

to sections 121.22 and 121.23 of the Revised Code. 166

(C) Each district created under this chapter shall be 167
considered a political subdivision for purposes of section 168
4905.34 of the Revised Code. 169

Membership on the board of directors of the district shall 170
not be considered as holding a public office. Directors and 171
their designees shall be entitled to the immunities provided by 172
Chapter 1702. and to the same immunity as an employee under 173
division (A) (6) of section 2744.03 of the Revised Code, except 174
that directors and their designees shall not be entitled to the 175
indemnification provided in section 2744.07 of the Revised Code 176
unless the director or designee is an employee or official of a 177
participating political subdivision of the district and is 178
acting within the scope of the director's or designee's 179
employment or official responsibilities. 180

District officers and district members and directors and 181
their designees or proxies shall not be required to file a 182
statement with the Ohio ethics commission under section 102.02 183
of the Revised Code. All records of the district shall be 184
treated as public records under section 149.43 of the Revised 185
Code, except that records of organizations contracting with a 186
district shall not be considered to be public records under 187
section 149.43 or section 149.431 of the Revised Code solely by 188
reason of any contract with a district. 189

(D) Except as otherwise provided in this section, the 190
nonprofit corporation that governs a district shall be organized 191
in the manner described in Chapter 1702. of the Revised Code. 192
Except in the case of a district created by an existing 193
qualified nonprofit corporation, the corporation's articles of 194
incorporation are required to be approved, as provided in 195

division (E) of this section, by resolution of the legislative 196
authority of each participating political subdivision of the 197
district. A copy of that resolution shall be filed along with 198
the articles of incorporation in the secretary of state's 199
office. 200

In addition to meeting the requirements for articles of 201
incorporation set forth in Chapter 1702. of the Revised Code, 202
the articles of incorporation for the nonprofit corporation 203
governing a district formed under this chapter shall provide all 204
the following: 205

(1) The name for the district, which shall include the 206
name of each participating political subdivision of the 207
district; 208

(2) A description of the territory within the district, 209
which may be all or part of each participating political 210
subdivision. The description shall be specific enough to enable 211
real property owners to determine if their property is located 212
within the district. 213

(3) A description of the procedure by which the articles 214
of incorporation may be amended. The procedure shall include 215
receiving approval of the amendment, by resolution, from the 216
legislative authority of each participating political 217
subdivision and filing the approved amendment and resolution 218
with the secretary of state. 219

(4) The reasons for creating the district, plus an 220
explanation of how the district will be conducive to the public 221
health, safety, peace, convenience, and welfare of the district. 222

(E) The articles of incorporation for a nonprofit 223
corporation governing a district created under this chapter and 224

amendments to them shall be submitted to the municipal 225
executive, if any, and the legislative authority of each 226
municipal corporation or township in which the proposed district 227
is to be located. Except in the case of a district created by an 228
existing qualified nonprofit corporation, the articles or 229
amendments shall be accompanied by a petition signed either by 230
the owners of at least sixty per cent of the front footage of 231
all real property located in the proposed district that abuts 232
upon any street, alley, public road, place, boulevard, parkway, 233
park entrance, easement, or other existing public improvement 234
within the proposed district, excluding church property or 235
property owned by the state, county, township, municipal, or 236
federal government, unless a church, county, township, or 237
municipal corporation has specifically requested in writing that 238
the property be included in the district, or by the owners of at 239
least seventy-five per cent of the area of all real property 240
located within the proposed district, excluding church property 241
or property owned by the state, county, township, municipal, or 242
federal government, unless a church, county, township, or 243
municipal corporation has specifically requested in writing that 244
the property be included in the district. Pursuant to Section 2o 245
of Article VIII, Ohio Constitution, the petition required under 246
this division may be for the purpose of developing and 247
implementing plans for special energy improvement projects or 248
shoreline improvement projects, and, in such case, is determined 249
to be in furtherance of the purposes set forth in Section 2o of 250
Article VIII, Ohio Constitution. ~~If~~ Except as provided in 251
division (H) of this section, if a special improvement district 252
is being created under this chapter for the purpose of 253
developing and implementing plans for special energy improvement 254
projects or shoreline improvement projects, the petition 255
required under this division shall be signed by one hundred per 256

cent of the owners of the area of all real property located 257
within the proposed special improvement district, at least one 258
special energy improvement project or shoreline improvement 259
project shall be designated for each parcel of real property 260
within the special improvement district, and the special 261
improvement district may include any number of parcels of real 262
property as determined by the legislative authority of each 263
participating political subdivision in which the proposed 264
special improvement district is to be located. For purposes of 265
determining compliance with these requirements, the area of the 266
district, or the front footage and ownership of property, shall 267
be as shown in the most current records available at the county 268
recorder's office and the county engineer's office sixty days 269
prior to the date on which the petition is filed. 270

Each municipal corporation or township with which the 271
petition is filed has sixty days to approve or disapprove, by 272
resolution, the petition, including the articles of 273
incorporation. In the case of a district created by an existing 274
qualified nonprofit corporation, each municipal corporation or 275
township has sixty days to approve or disapprove the creation of 276
the district after the corporation submits the articles of 277
incorporation or amendments thereto. This chapter does not 278
prohibit or restrict the rights of municipal corporations under 279
Article XVIII of the Ohio Constitution or the right of the 280
municipal legislative authority to impose reasonable conditions 281
in a resolution of approval. The acquisition, installation, 282
equipping, and improvement of a special energy improvement 283
project under this chapter shall not supersede any local zoning, 284
environmental, or similar law or regulation. In addition, all 285
activities associated with a shoreline improvement project that 286
is implemented under this chapter shall comply with all 287

applicable local zoning requirements, all local, state, and 288
federal environmental laws and regulations, and all applicable 289
requirements established in Chapter 1506. of the Revised Code 290
and rules adopted under it. 291

(F) Persons proposing creation and operation of the 292
district may propose an initial plan for public services or 293
public improvements that benefit all or any part of the 294
district. Any initial plan shall be submitted as part of the 295
petition proposing creation of the district or, in the case of a 296
district created by an existing qualified nonprofit corporation, 297
shall be submitted with the articles of incorporation or 298
amendments thereto. 299

An initial plan may include provisions for the following: 300

(1) Creation and operation of the district and of the 301
nonprofit corporation to govern the district under this chapter; 302

(2) Hiring employees and professional services; 303

(3) Contracting for insurance; 304

(4) Purchasing or leasing office space and office 305
equipment; 306

(5) Other actions necessary initially to form, operate, or 307
organize the district and the nonprofit corporation to govern 308
the district; 309

(6) A plan for public improvements or public services that 310
benefit all or part of the district, which plan shall comply 311
with the requirements of division (A) of section 1710.06 of the 312
Revised Code and may include, but is not limited to, any of the 313
permissive provisions described in the fourth sentence of that 314
division or listed in divisions (A)(1) to (7) of that section; 315

(7) If the special improvement district is being created 316
under this chapter for the purpose of developing and 317
implementing plans for special energy improvement projects or 318
shoreline improvement projects, provision for the addition of 319
territory to the special improvement district. 320

After the initial plan is approved by all municipal 321
corporations and townships to which it is submitted for approval 322
and the district is created, each participating subdivision 323
shall levy a special assessment within its boundaries to pay for 324
the costs of the initial plan. The levy shall be for no more 325
than ten years from the date of the approval of the initial 326
plan; except that if the proceeds of the levy are to be used to 327
pay the costs of a special energy improvement project or 328
shoreline improvement project, the levy of a special assessment 329
shall be for no more than thirty years from the date of approval 330
of the initial plan. In the event that additional territory is 331
added to a special improvement district, the special assessment 332
to be levied with respect to such additional territory shall 333
commence not earlier than the date such territory is added and 334
shall be for no more than thirty years from such date. For 335
purposes of levying an assessment for this initial plan, the 336
services or improvements included in the initial plan shall be 337
deemed a special benefit to property owners within the district. 338

(G) Each nonprofit corporation governing a district under 339
this chapter may do the following: 340

(1) Exercise all powers of nonprofit corporations granted 341
under Chapter 1702. of the Revised Code that do not conflict 342
with this chapter; 343

(2) Develop, adopt, revise, implement, and repeal plans 344
for public improvements and public services for all or any part 345

of the district; 346

(3) Contract with any person, political subdivision as 347
defined in section 2744.01 of the Revised Code, or state agency 348
as defined in section 1.60 of the Revised Code to develop and 349
implement plans for public improvements or public services 350
within the district; 351

(4) Contract and pay for insurance for the district and 352
for directors, officers, agents, contractors, employees, or 353
members of the district for any consequences of the 354
implementation of any plan adopted by the district or any 355
actions of the district. 356

The board of directors of a special improvement district 357
may, acting as agent and on behalf of a participating political 358
subdivision, sell, transfer, lease, or convey any special energy 359
improvement project owned by the participating political 360
subdivision upon a determination by the legislative authority 361
thereof that the project is not required to be owned exclusively 362
by the participating political subdivision for its purposes, for 363
uses determined by the legislative authority thereof as those 364
that will promote the welfare of the people of such 365
participating political subdivision; ~~to~~ improve the quality of 366
life and the general and economic well-being of the people of 367
the participating political subdivision; better ensure the 368
public health, safety, and welfare; protect water and other 369
natural resources; provide for the conservation and preservation 370
of natural and open areas and farmlands, including by making 371
urban areas more desirable or suitable for development and 372
revitalization; control, prevent, minimize, clean up, or mediate 373
certain contamination of or pollution from lands in the state 374
and water contamination or pollution; or provide for safe and 375

natural areas and resources. The legislative authority of each 376
participating political subdivision shall specify the 377
consideration for such sale, transfer, lease, or conveyance and 378
any other terms thereof. Any determinations made by a 379
legislative authority of a participating political subdivision 380
under this division shall be conclusive. 381

Any sale, transfer, lease, or conveyance of a special 382
energy improvement project by a participating political 383
subdivision or the board of directors of the special improvement 384
district may be made without advertising, receipt of bids, or 385
other competitive bidding procedures applicable to the 386
participating political subdivision or the special improvement 387
district under Chapter 153. or 735. or section 1710.11 of the 388
Revised Code or other representative provisions of the Revised 389
Code. 390

(H) The owner of real property that is part of a planned 391
community or a condominium development is deemed to have signed 392
the petitions required under division (E) of this section and 393
division (B) of section 1710.06 of the Revised Code with respect 394
to a special improvement district that is being created for the 395
purpose of developing and implementing plans for shoreline 396
improvement projects if the district and the projects have been 397
approved through an alternative process prescribed by the 398
bylaws, declarations, covenants, and restrictions governing the 399
planned community or condominium development. Such an 400
alternative process may consist of a vote of the owners 401
association or unit owners association, the approval of a 402
specified percentage of property owners, or any other procedure 403
authorized by the bylaws, declarations, covenants, and 404
restrictions governing the planned community or condominium 405
development. 406

As used in this division, "condominium development" and "unit owners association" have the same meanings as in section 5311.01 of the Revised Code, and "planned community," "owners association," "bylaws," and "declaration" have the same meanings as in section 5312.01 of the Revised Code.

Sec. 1710.06. (A) The board of directors of a special improvement district may develop and adopt one or more written plans for public improvements or public services that benefit all or any part of the district. Each plan shall set forth the specific public improvements or public services that are to be provided, identify the area in which they will be provided, and specify the method of assessment to be used. Each plan for public improvements or public services shall indicate the period of time the assessments are to be levied for the improvements and services and, if public services are included in the plan, the period of time the services are to remain in effect. Plans for public improvements may include the planning, design, construction, reconstruction, enlargement, or alteration of any public improvements and the acquisition of land for the improvements. Plans for public improvements or public services may also include, but are not limited to, provisions for the following:

(1) Creating and operating the district and the nonprofit corporation under this chapter, including hiring employees and professional services, contracting for insurance, and purchasing or leasing office space and office equipment and other requirements of the district;

(2) Planning, designing, and implementing a public improvements or public services plan, including hiring architectural, engineering, legal, appraisal, insurance,

consulting, energy auditing, and planning services, and, for	437
public services, managing, protecting, and maintaining public	438
and private facilities, including public improvements;	439
(3) Conducting court proceedings to carry out this	440
chapter;	441
(4) Paying damages resulting from the provision of public	442
improvements or public services and implementing the plans;	443
(5) Paying the costs of issuing, paying interest on, and	444
redeeming notes and bonds issued for funding public improvements	445
and public services plans;	446
(6) Sale, lease, lease with an option to purchase,	447
conveyance of other interests in, or other contracts for the	448
acquisition, construction, maintenance, repair, furnishing,	449
equipping, operation, or improvement of any special energy	450
improvement project by the special improvement district, between	451
a participating political subdivision and the special	452
improvement district, and between the special improvement	453
district and any owner of real property in the special	454
improvement district on which a special energy improvement	455
project has been acquired, installed, equipped, or improved; and	456
(7) Aggregating the renewable energy credits generated by	457
one or more special energy improvement projects within a special	458
improvement district, upon the consent of the owners of the	459
credits and for the purpose of negotiating and completing the	460
sale of such credits.	461
(B) Once the board of directors of the special improvement	462
district adopts a plan, it shall submit the plan to the	463
legislative authority of each participating political	464
subdivision and the municipal executive of each municipal	465

corporation in which the district is located, if any. The 466
legislative authorities and municipal executives shall review 467
the plan and, within sixty days after receiving it, may submit 468
their comments and recommendations about it to the district. 469
After reviewing these comments and recommendations, the board of 470
directors may amend the plan. It may then submit the plan, 471
amended or otherwise, in the form of a petition to members of 472
the district whose property may be assessed for the plan. Once 473
the petition is signed by those members who own at least sixty 474
per cent of the front footage of property that is to be assessed 475
and that abuts upon a street, alley, public road, place, 476
boulevard, parkway, park entrance, easement, or other public 477
improvement, or those members who own at least seventy-five per 478
cent of the area to be assessed for the improvement or service, 479
the petition may be submitted to each legislative authority for 480
approval. ~~If~~ Except as provided in division (H) of section 481
1710.02 of the Revised Code, if the special improvement district 482
was created for the purpose of developing and implementing plans 483
for special energy improvement projects or shoreline improvement 484
projects, the petition required under this division shall be 485
signed by one hundred per cent of the owners of the area of all 486
real property located within the area to be assessed for the 487
special energy improvement project or shoreline improvement 488
project. 489

Each legislative authority shall, by resolution, approve 490
or reject the petition within sixty days after receiving it. If 491
the petition is approved by the legislative authority of each 492
participating political subdivision, the plan contained in the 493
petition shall be effective at the earliest date on which a 494
nonemergency resolution of the legislative authority with the 495
latest effective date may become effective. A plan may not be 496

resubmitted to the legislative authorities and municipal 497
executives more than three times in any twelve-month period. 498

(C) Each participating political subdivision shall levy, 499
by special assessment upon specially benefited property located 500
within the district, the costs of any public improvements or 501
public services plan contained in a petition approved by the 502
participating political subdivisions under this section or 503
division (F) of section 1710.02 of the Revised Code. The levy 504
shall be made in accordance with the procedures set forth in 505
Chapter 727. of the Revised Code, except that: 506

(1) The assessment for each improvements or services plan 507
may be levied by any one or any combination of the methods of 508
assessment listed in section 727.01 of the Revised Code, 509
provided that the assessment is uniformly applied. 510

(2) For the purpose of levying an assessment, the board of 511
directors may combine one or more improvements or services plans 512
or parts of plans and levy a single assessment against specially 513
benefited property. 514

(3) For purposes of special assessments levied by a 515
township pursuant to this chapter, references in Chapter 727. of 516
the Revised Code to the municipal corporation shall be deemed to 517
refer to the township, and references to the legislative 518
authority of the municipal corporation shall be deemed to refer 519
to the board of township trustees. 520

Church property or property owned by a political 521
subdivision, including any participating political subdivision 522
in which a special improvement district is located, shall be 523
included in and be subject to special assessments made pursuant 524
to a plan adopted under this section or division (F) of section 525

1710.02 of the Revised Code, if the church or political 526
subdivision has specifically requested in writing that its 527
property be included within the special improvement district and 528
the church or political subdivision is a member of the district 529
or, in the case of a district created by an existing qualified 530
nonprofit corporation, if the church is a member of the 531
corporation. 532

(D) All rights and privileges of property owners who are 533
assessed under Chapter 727. of the Revised Code shall be granted 534
to property owners assessed under this chapter, including those 535
rights and privileges specified in sections 727.15 to 727.17 and 536
727.18 to 727.22 of the Revised Code and the right to notice of 537
the resolution of necessity and the filing of the estimated 538
assessment under section 727.13 of the Revised Code. Property 539
owners assessed for public services under this chapter shall 540
have the same rights and privileges as property owners assessed 541
for public improvements under this chapter. 542

Section 2. That existing sections 1710.01, 1710.02, and 543
1710.06 of the Revised Code are hereby repealed. 544