

As Reported by the Senate Energy and Natural Resources Committee

132nd General Assembly

Regular Session

2017-2018

Sub. S. B. No. 51

Senators Skindell, Eklund

Cosponsors: Senators Thomas, Schiavoni, Williams, Hite, O'Brien, LaRose

A BILL

To amend sections 1710.01, 1710.02, and 1710.06 of
the Revised Code to authorize the creation of a
special improvement district to facilitate Lake
Erie shoreline improvement.

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

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

Sec. 1710.01. As used in this chapter:

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

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

(C) "Church property" means property that is described as
being exempt from taxation under division (A) (2) of section
5709.07 of the Revised Code and that the county auditor has
entered on the exempt list compiled under section 5713.07 of the

Revised Code.	18
(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 20 21
(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 23 24 25 26
(F) "Legislative authority of a participating political subdivision" means, with reference to a township, the board of township trustees.	27 28 29
(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 <u>project or shoreline improvement project.</u>	30 31 32 33 34 35
(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 37 38 39
(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, or an energy efficiency improvement, whether such real or	40 41 42 43 44 45 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
<u>(O) "Shoreline improvement project" means acquiring, constructing, installing, equipping, improving, maintaining, or repairing real or tangible personal property necessary or useful for making improvements to abate erosion along the Lake Erie shoreline.</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 corporations and townships for the purpose of developing and	101 102 103 104

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 sections 1506.10 139
and 1506.11 of the Revised Code. However, the state shall remain 140
exempt from any special assessment that may be levied against 141
that territory under section 1710.06 and Chapter 727. of the 142
Revised Code. More than one district may be created within a 143
participating political subdivision, but no real property may be 144
included within more than one district unless the owner of the 145
property files a written consent with the clerk of the 146
legislative authority, the township fiscal officer, or the 147
village clerk, as appropriate. The area of each district shall 148
be contiguous; except that the area of a special improvement 149
district may be noncontiguous if all parcels of real property 150
included within such area contain at least one special energy 151
improvement or shoreline improvement thereon. 152

(B) Except as provided in division (C) of this section, a 153
district created under this chapter is not a political 154
subdivision. A district created under this chapter shall be 155
considered a public agency under section 102.01 and a public 156
authority under section 4115.03 of the Revised Code. Each member 157
of the board of directors of a district, each member's designee 158
or proxy, and each officer and employee of a district shall be 159
considered a public official or employee under section 102.01 of 160
the Revised Code and a public official and public servant under 161
section 2921.42 of the Revised Code. Districts created under 162
this chapter are not subject to sections 121.81 to 121.83 of the 163
Revised Code. Districts created under this chapter are subject 164
to sections 121.22 and 121.23 of the Revised Code. 165

(C) Each district created under this chapter shall be 166

considered a political subdivision for purposes of section 167
4905.34 of the Revised Code. 168

Membership on the board of directors of the district shall 169
not be considered as holding a public office. Directors and 170
their designees shall be entitled to the immunities provided by 171
Chapter 1702. and to the same immunity as an employee under 172
division (A)(6) of section 2744.03 of the Revised Code, except 173
that directors and their designees shall not be entitled to the 174
indemnification provided in section 2744.07 of the Revised Code 175
unless the director or designee is an employee or official of a 176
participating political subdivision of the district and is 177
acting within the scope of the director's or designee's 178
employment or official responsibilities. 179

District officers and district members and directors and 180
their designees or proxies shall not be required to file a 181
statement with the Ohio ethics commission under section 102.02 182
of the Revised Code. All records of the district shall be 183
treated as public records under section 149.43 of the Revised 184
Code, except that records of organizations contracting with a 185
district shall not be considered to be public records under 186
section 149.43 or section 149.431 of the Revised Code solely by 187
reason of any contract with a district. 188

(D) Except as otherwise provided in this section, the 189
nonprofit corporation that governs a district shall be organized 190
in the manner described in Chapter 1702. of the Revised Code. 191
Except in the case of a district created by an existing 192
qualified nonprofit corporation, the corporation's articles of 193
incorporation are required to be approved, as provided in 194
division (E) of this section, by resolution of the legislative 195
authority of each participating political subdivision of the 196

district. A copy of that resolution shall be filed along with 197
the articles of incorporation in the secretary of state's 198
office. 199

In addition to meeting the requirements for articles of 200
incorporation set forth in Chapter 1702. of the Revised Code, 201
the articles of incorporation for the nonprofit corporation 202
governing a district formed under this chapter shall provide all 203
the following: 204

(1) The name for the district, which shall include the 205
name of each participating political subdivision of the 206
district; 207

(2) A description of the territory within the district, 208
which may be all or part of each participating political 209
subdivision. The description shall be specific enough to enable 210
real property owners to determine if their property is located 211
within the district. 212

(3) A description of the procedure by which the articles 213
of incorporation may be amended. The procedure shall include 214
receiving approval of the amendment, by resolution, from the 215
legislative authority of each participating political 216
subdivision and filing the approved amendment and resolution 217
with the secretary of state. 218

(4) The reasons for creating the district, plus an 219
explanation of how the district will be conducive to the public 220
health, safety, peace, convenience, and welfare of the district. 221

(E) The articles of incorporation for a nonprofit 222
corporation governing a district created under this chapter and 223
amendments to them shall be submitted to the municipal 224
executive, if any, and the legislative authority of each 225

municipal corporation or township in which the proposed district 226
is to be located. Except in the case of a district created by an 227
existing qualified nonprofit corporation, the articles or 228
amendments shall be accompanied by a petition signed either by 229
the owners of at least sixty per cent of the front footage of 230
all real property located in the proposed district that abuts 231
upon any street, alley, public road, place, boulevard, parkway, 232
park entrance, easement, or other existing public improvement 233
within the proposed district, excluding church property or 234
property owned by the state, county, township, municipal, or 235
federal government, unless a church, county, township, or 236
municipal corporation has specifically requested in writing that 237
the property be included in the district, or by the owners of at 238
least seventy-five per cent of the area of all real property 239
located within the proposed district, excluding church property 240
or property owned by the state, county, township, municipal, or 241
federal government, unless a church, county, township, or 242
municipal corporation has specifically requested in writing that 243
the property be included in the district. Pursuant to Section 2o 244
of Article VIII, Ohio Constitution, the petition required under 245
this division may be for the purpose of developing and 246
implementing plans for special energy improvement projects or 247
shoreline improvement projects, and, in such case, is determined 248
to be in furtherance of the purposes set forth in Section 2o of 249
Article VIII, Ohio Constitution. ~~If~~ Except as provided in 250
division (H) of this section, if a special improvement district 251
is being created under this chapter for the purpose of 252
developing and implementing plans for special energy improvement 253
projects or shoreline improvement projects, the petition 254
required under this division shall be signed by one hundred per 255
cent of the owners of the area of all real property located 256
within the proposed special improvement district, at least one 257

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

Each municipal corporation or township with which the 270
petition is filed has sixty days to approve or disapprove, by 271
resolution, the petition, including the articles of 272
incorporation. In the case of a district created by an existing 273
qualified nonprofit corporation, each municipal corporation or 274
township has sixty days to approve or disapprove the creation of 275
the district after the corporation submits the articles of 276
incorporation or amendments thereto. This chapter does not 277
prohibit or restrict the rights of municipal corporations under 278
Article XVIII of the Ohio Constitution or the right of the 279
municipal legislative authority to impose reasonable conditions 280
in a resolution of approval. The acquisition, installation, 281
equipping, and improvement of a special energy improvement 282
project under this chapter shall not supersede any local zoning, 283
environmental, or similar law or regulation. In addition, all 284
activities associated with a shoreline improvement project that 285
is implemented under this chapter shall comply with all 286
applicable local zoning requirements, all local, state, and 287
federal environmental laws and regulations, and all applicable 288

<u>requirements established in Chapter 1506. of the Revised Code</u>	289
<u>and rules adopted under it.</u>	290
(F) Persons proposing creation and operation of the district may propose an initial plan for public services or public improvements that benefit all or any part of the district. Any initial plan shall be submitted as part of the petition proposing creation of the district or, in the case of a district created by an existing qualified nonprofit corporation, shall be submitted with the articles of incorporation or amendments thereto.	291 292 293 294 295 296 297 298
An initial plan may include provisions for the following:	299
(1) Creation and operation of the district and of the nonprofit corporation to govern the district under this chapter;	300 301
(2) Hiring employees and professional services;	302
(3) Contracting for insurance;	303
(4) Purchasing or leasing office space and office equipment;	304 305
(5) Other actions necessary initially to form, operate, or organize the district and the nonprofit corporation to govern the district;	306 307 308
(6) A plan for public improvements or public services that benefit all or part of the district, which plan shall comply with the requirements of division (A) of section 1710.06 of the Revised Code and may include, but is not limited to, any of the permissive provisions described in the fourth sentence of that division or listed in divisions (A)(1) to (7) of that section;	309 310 311 312 313 314
(7) If the special improvement district is being created under this chapter for the purpose of developing and	315 316

implementing plans for special energy improvement projects or 317
shoreline improvement projects, provision for the addition of 318
territory to the special improvement district. 319

After the initial plan is approved by all municipal 320
corporations and townships to which it is submitted for approval 321
and the district is created, each participating subdivision 322
shall levy a special assessment within its boundaries to pay for 323
the costs of the initial plan. The levy shall be for no more 324
than ten years from the date of the approval of the initial 325
plan; except that if the proceeds of the levy are to be used to 326
pay the costs of a special energy improvement project or 327
shoreline improvement project, the levy of a special assessment 328
shall be for no more than thirty years from the date of approval 329
of the initial plan. In the event that additional territory is 330
added to a special improvement district, the special assessment 331
to be levied with respect to such additional territory shall 332
commence not earlier than the date such territory is added and 333
shall be for no more than thirty years from such date. For 334
purposes of levying an assessment for this initial plan, the 335
services or improvements included in the initial plan shall be 336
deemed a special benefit to property owners within the district. 337

(G) Each nonprofit corporation governing a district under 338
this chapter may do the following: 339

(1) Exercise all powers of nonprofit corporations granted 340
under Chapter 1702. of the Revised Code that do not conflict 341
with this chapter; 342

(2) Develop, adopt, revise, implement, and repeal plans 343
for public improvements and public services for all or any part 344
of the district; 345

(3) Contract with any person, political subdivision as 346
defined in section 2744.01 of the Revised Code, or state agency 347
as defined in section 1.60 of the Revised Code to develop and 348
implement plans for public improvements or public services 349
within the district; 350

(4) Contract and pay for insurance for the district and 351
for directors, officers, agents, contractors, employees, or 352
members of the district for any consequences of the 353
implementation of any plan adopted by the district or any 354
actions of the district. 355

The board of directors of a special improvement district 356
may, acting as agent and on behalf of a participating political 357
subdivision, sell, transfer, lease, or convey any special energy 358
improvement project owned by the participating political 359
subdivision upon a determination by the legislative authority 360
thereof that the project is not required to be owned exclusively 361
by the participating political subdivision for its purposes, for 362
uses determined by the legislative authority thereof as those 363
that will promote the welfare of the people of such 364
participating political subdivision; ~~to~~ improve the quality of 365
life and the general and economic well-being of the people of 366
the participating political subdivision; better ensure the 367
public health, safety, and welfare; protect water and other 368
natural resources; provide for the conservation and preservation 369
of natural and open areas and farmlands, including by making 370
urban areas more desirable or suitable for development and 371
revitalization; control, prevent, minimize, clean up, or mediate 372
certain contamination of or pollution from lands in the state 373
and water contamination or pollution; or provide for safe and 374
natural areas and resources. The legislative authority of each 375
participating political subdivision shall specify the 376

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

Any sale, transfer, lease, or conveyance of a special 381
energy improvement project by a participating political 382
subdivision or the board of directors of the special improvement 383
district may be made without advertising, receipt of bids, or 384
other competitive bidding procedures applicable to the 385
participating political subdivision or the special improvement 386
district under Chapter 153. or 735. or section 1710.11 of the 387
Revised Code or other representative provisions of the Revised 388
Code. 389

(H) The owner of real property that is part of a planned 390
community or a condominium development is deemed to have signed 391
the petitions required under division (E) of this section and 392
division (B) of section 1710.06 of the Revised Code with respect 393
to a special improvement district that is being created for the 394
purpose of developing and implementing plans for shoreline 395
improvement projects if the district and the projects have been 396
approved through an alternative process prescribed by the 397
bylaws, declarations, covenants, and restrictions governing the 398
planned community or condominium development. Such an 399
alternative process may consist of a vote of the owners 400
association or unit owners association, the approval of a 401
specified percentage of property owners, or any other procedure 402
authorized by the bylaws, declarations, covenants, and 403
restrictions governing the planned community or condominium 404
development. 405

As used in this division, "condominium development" and 406

"unit owners association" have the same meanings as in section 407
5311.01 of the Revised Code, and "planned community," "owners 408
association," "bylaws," and "declaration" have the same meanings 409
as in section 5312.01 of the Revised Code. 410

Sec. 1710.06. (A) The board of directors of a special 411
improvement district may develop and adopt one or more written 412
plans for public improvements or public services that benefit 413
all or any part of the district. Each plan shall set forth the 414
specific public improvements or public services that are to be 415
provided, identify the area in which they will be provided, and 416
specify the method of assessment to be used. Each plan for 417
public improvements or public services shall indicate the period 418
of time the assessments are to be levied for the improvements 419
and services and, if public services are included in the plan, 420
the period of time the services are to remain in effect. Plans 421
for public improvements may include the planning, design, 422
construction, reconstruction, enlargement, or alteration of any 423
public improvements and the acquisition of land for the 424
improvements. Plans for public improvements or public services 425
may also include, but are not limited to, provisions for the 426
following: 427

(1) Creating and operating the district and the nonprofit 428
corporation under this chapter, including hiring employees and 429
professional services, contracting for insurance, and purchasing 430
or leasing office space and office equipment and other 431
requirements of the district; 432

(2) Planning, designing, and implementing a public 433
improvements or public services plan, including hiring 434
architectural, engineering, legal, appraisal, insurance, 435
consulting, energy auditing, and planning services, and, for 436

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

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

Each legislative authority shall, by resolution, approve 489
or reject the petition within sixty days after receiving it. If 490
the petition is approved by the legislative authority of each 491
participating political subdivision, the plan contained in the 492
petition shall be effective at the earliest date on which a 493
nonemergency resolution of the legislative authority with the 494
latest effective date may become effective. A plan may not be 495
resubmitted to the legislative authorities and municipal 496

executives more than three times in any twelve-month period. 497

(C) Each participating political subdivision shall levy, 498
by special assessment upon specially benefited property located 499
within the district, the costs of any public improvements or 500
public services plan contained in a petition approved by the 501
participating political subdivisions under this section or 502
division (F) of section 1710.02 of the Revised Code. The levy 503
shall be made in accordance with the procedures set forth in 504
Chapter 727. of the Revised Code, except that: 505

(1) The assessment for each improvements or services plan 506
may be levied by any one or any combination of the methods of 507
assessment listed in section 727.01 of the Revised Code, 508
provided that the assessment is uniformly applied. 509

(2) For the purpose of levying an assessment, the board of 510
directors may combine one or more improvements or services plans 511
or parts of plans and levy a single assessment against specially 512
benefited property. 513

(3) For purposes of special assessments levied by a 514
township pursuant to this chapter, references in Chapter 727. of 515
the Revised Code to the municipal corporation shall be deemed to 516
refer to the township, and references to the legislative 517
authority of the municipal corporation shall be deemed to refer 518
to the board of township trustees. 519

Church property or property owned by a political 520
subdivision, including any participating political subdivision 521
in which a special improvement district is located, shall be 522
included in and be subject to special assessments made pursuant 523
to a plan adopted under this section or division (F) of section 524
1710.02 of the Revised Code, if the church or political 525

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

(D) All rights and privileges of property owners who are 532
assessed under Chapter 727. of the Revised Code shall be granted 533
to property owners assessed under this chapter, including those 534
rights and privileges specified in sections 727.15 to 727.17 and 535
727.18 to 727.22 of the Revised Code and the right to notice of 536
the resolution of necessity and the filing of the estimated 537
assessment under section 727.13 of the Revised Code. Property 538
owners assessed for public services under this chapter shall 539
have the same rights and privileges as property owners assessed 540
for public improvements under this chapter. 541

Section 2. That existing sections 1710.01, 1710.02, and 542
1710.06 of the Revised Code are hereby repealed. 543