



## Ohio Revised Code

### Section 5555.42 Application to court if equitable assessment cannot be made.

Effective: September 29, 2011

Legislation: House Bill 153 - 129th General Assembly

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A board of county commissioners desiring to construct a county road improvement, and finding that no equitable method of apportioning the compensation, damages, and expenses thereof is provided by section 5555.41 of the Revised Code, or finding that an equitable assessment cannot be made by the use of any of the several assessment areas authorized by said section, may order the county engineer to make a tentative plan for such improvement and an approximate estimate of the cost. Such board may thereupon file an application in the court of common pleas describing the improvement in question, and a copy of the tentative plan and approximate estimate of cost shall be attached to such application. The board shall set forth in such application that the compensation, damages, and expenses of the improvement cannot be equitably apportioned under any of the several plans provided by said section or that such compensation, damages, and expenses cannot be equitably assessed by the use of any one of the several assessment areas authorized by said section, or that both such conditions exist, and it shall set forth a method of apportioning the compensation, damages, and expenses and a definite description of the area against which it desires to assess any part of such compensation, damages, and expenses. The application shall contain a prayer requesting authority from such court to construct the improvement and apportion the compensation, damages, and expenses according to the plan suggested by such board and to assess the designated portion of the cost against the real estate within the area described in the petition.

Notice of the filing and pendency of such application shall be given once a week for four consecutive weeks by publication in a newspaper of general circulation in such county or as provided in section 7.16 of the Revised Code. Such notice shall describe the route and termini of the improvement and set forth the estimated cost and the proposed method of apportionment and assessment area. After such notice has been given, the court or a judge thereof shall fix a time for a hearing on such application, and, at the time fixed, the court or a judge thereof shall hear such application and all evidence offered by the board or any taxpayer of the county for or against the proposed plan of apportionment and for or against the use of the suggested assessment area. If the court finds that the suggested plan of apportionment and the area against which special assessments are to be made are fair and just, that the cost of the improvement will not be excessive in view of



the benefits conferred, and that all the real estate within the suggested assessment area will be benefited by the construction of the improvement upon the plan suggested and by the use of the method of apportionment set forth in said application, such court may authorize the board to proceed upon the suggested plan and to apportion the compensation, damages, and expenses in the manner set forth in the application and to assess against the real estate within the assessment area designated in the application, according to the benefits, that portion of the cost to be specially assessed; otherwise the court shall dismiss the application and the board may not proceed with the improvement. The court may modify the suggested plan of apportionment or the suggested assessment area and grant the prayer of the application subject to such modifications as it determines are just and proper. The board in its application may set up any division of cost which it thinks proper among the county, the owners of lands to be specially assessed, and any municipal corporation within which such projected improvement is situated in whole or in part, but no portion of the cost may be apportioned to a municipal corporation without the consent of such municipal corporation evidenced by an ordinance or resolution of its legislative authority.

When the prayer of any such application is granted by the court or a judge thereof and the plan of apportionment and area of assessment is approved by such court, either as set forth in the application or as modified by the court, the board may proceed with the construction of the improvement and use the method of apportionment and the assessment area authorized by the court. In such event, the board may levy taxes and issue bonds in the manner provided by law with respect to improvements, the compensation, damages, and expenses of which are apportioned and paid as provided in section 5555.41 of the Revised Code, and all proceedings in connection with such improvement shall be conducted in accordance with sections 5555.01 to 5555.83 of the Revised Code, except as provided in this section. The special assessments shall be made by the board against the real estate within the assessment area authorized by the court, but no assessment against any lot or parcel of real estate shall exceed the actual benefits conferred thereon by the construction of the improvement. This section also applies to improvements of sections of a state highway within counties having a tax duplicate of real and personal property in excess of three hundred million dollars, and with respect to which the board desires to co-operate with the department of transportation.