

# Environmental Conservation

## ARTICLE 15 WATER RESOURCES

### TITLE 11 LOCAL AND REGIONAL WATER RESOURCES PLANNING AND DEVELOPMENT

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§ 15-1101. Legislative purposes.

In addition to the powers vested in the department by this article 15, and in order to stimulate and encourage local participation and assistance, comprehensive planning for the protection, control, conservation, development and beneficial utilization of the water resources of the state may be undertaken as provided in title 11 of this article. Nothing contained herein shall be deemed to repeal, amend or modify the powers and duties of the department as now or hereafter provided by this article 15 or by any other statute or to repeal the procedures authorized thereby.

§ 15-1103. Petition; proceedings; exclusion of certain counties.

1. Any county, city, town or village, when duly authorized to do so, or any combination thereof, except as provided in subdivision 7 hereof, may submit to the department a verified petition requesting the department to consider a proposal for a survey and study of the water resources of a specified region of which the petitioning municipality is a part, for the purpose of preparing and providing a comprehensive plan or plans for the protection, conservation, development and beneficial use of such resources. Any such petition, prior to its submission to the department, must be approved by the county legislative body of each county wholly or partly within the specified region. The petition shall set forth the facts upon which the petitioner or petitioners rely to show that it is necessary and would be in the public interest and benefit to undertake such survey, study and comprehensive planning. The petition shall list the persons, public corporations and state agencies engaged in receiving, collecting, storing, transmitting, distributing, processing or otherwise dealing with water for a public purpose, within the region set forth in the petition, and the names and addresses of the clerks or other executive officers thereof. There shall be attached to the petition a certified copy of the resolution, ordinance or other evidence of authority authorizing the execution of the petition.

2. Upon receipt of a petition, the department with reasonable diligence shall cause public notice to be given that on a day therein

named it will hold a public hearing at such place, within the region specified in the petition, as is designated in the notice for the purpose of hearing all persons, public corporations and state agencies in favor of or opposed to the proposal. Such public notice shall be given by publication as provided in subdivision 1 of section 15-0903.

3. In addition to such public notice, the department shall give notice of the time and place of the public hearing in writing, at least fifteen days prior to the date thereof, to the state Departments of Agriculture and Markets, Commerce, Health and Transportation, and the State Soil Conservation Committee; also to the clerks or other executive officers of the public corporations and state agencies, persons and other agencies as listed in the petition. The department may also give similar written notice to any other person, body or agency it may deem would have an interest in or would be affected by any comprehensive planning. Any public corporation, acting through any executive office authorized to take such action by its governing body or board, may file with the department a written request that such public corporation be notified in writing of any hearing under title 11 of this article in relation to any region embraced in whole or in part within any area or areas of the state designated by such public corporation in its written request. After the filing of such request, where any petition shall be filed with the department setting forth any such region, but not listing such public corporation, the department shall give notice to such public corporation of any hearing on such petition, in the same manner as if it had been listed in the petition pursuant to subdivision 1 of this section. For the purpose of any hearings or proceedings under title 11 of this article or to review a decision in the manner provided by article seventy-eight of the Civil Practice Law and Rules relating to any region embraced within the area or areas designated in such request, any public corporation entitled to notice by reason of having filed such request shall be deemed to be and shall have all of the rights of a party to the same extent as if such public corporation had been listed in the petition pursuant to subdivision 1 of this section. A modification or withdrawal of any such request may be filed by any public corporation in the same manner as an original request. Any such modification shall have the same force and effect as an original request. Failure of the department to give notice pursuant to such written request shall not invalidate any proceedings had or action taken by the department.

4. The department shall, upon the day specified in the notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to take testimony and proof and to hear arguments submitted in support of and in opposition to the proposal. If in the course of the hearing, it shall appear to the department that the region specified in the petition should be enlarged in order to undertake a more comprehensive and beneficial study, survey and planning, the department shall adjourn the hearing a sufficient period of time in order to obtain the approval of the county legislative body or bodies of the county or counties in which the additional area is located for the inclusion of such additional area in the proposal. If such approval is given, the department shall give, within the additional area, similar public and written notice, and shall give similar written notice to public corporations which have filed requests, and in like manner, as provided by subdivisions 2 and 3 of this section, of the time and place fixed by the department for the resumption of the public hearing. The hearing shall resume and proceed at such time and place as if the additional area had been included in the petition as part of the region.

5. Within thirty days after the taking of testimony and proofs, any person, public corporation or state agency, who or which has appeared at the hearing, may file with the department written objections to the proposal or parts thereof as petitioned for or as enlarged as above provided. Such objections shall specify the grounds and reasons upon which they are made. Briefs in support of and in opposition to the proposal may be filed with the department within the same thirty day period. Upon expiration of the period, the hearing shall be deemed closed, unless the department determines that the hearing should be reopened for the taking of further testimony or other proof.

6. Thereafter and with all convenient speed, the department shall render its decision, determining if it is or is not in the public interest or benefit to undertake the proposal. If the proposal is found to be in the public interest or benefit, the department shall determine the region of the state to be included in the study, survey and comprehensive planning, the minimum number of specific purposes for which the planning should be undertaken, the extent of the study, survey and planning involved and an approximate estimate of the cost of the study and survey.

7. Following this determination by the department, and before proceeding thereon, the petitioner for the survey and study decide within six months after the date of the department's determination whether to proceed with the survey and study or to withdraw its request therefor. Notice of its decision shall be given promptly to the department. The department may grant one or more extensions of six months each to the petitioner to make its decision.

8. The area of the state within the corporate limits of the city of New York shall not be included, in whole or in part, in any region proposed by a petition, or as enlarged or as determined by the department under this section, which region includes in whole or in part the counties of Nassau or Suffolk, or either of them.

§ 15-1105. Regional planning and development board; meetings; quorum; powers and duties.

1. If the department shall determine that the proposal should be undertaken, the department, after the expiration of the time in which a review of its decision may be had or, in the event such a review has been instituted, after a final judgment or order affirming the department's decision has been entered therein, shall appoint a regional planning board, hereinafter referred to as "the board."

2. The board shall consist of seven members residing in the region of the proposal and of whom:

a. At least one member shall be representative of the municipal corporations within the region of the proposal; and service as a member of the board shall not be deemed as service rendered to any municipal corporation;

b. At least one member shall be representative of the agricultural and farming interests within the region of the proposal and shall be actively interested in the improvement and development of agricultural and farming process and techniques;

c. At least one member shall be representative of industry within the region of the proposal and actively engaged or employed in an industrial or commercial pursuit;

d. At least one member shall be representative of groups within the region of the proposal interested in the needs of fisheries and

waterfowl and in forms of outdoor recreation made possible by the state's waters; and

e. At least one member shall be actively engaged in or connected with the acquisition, operation or management of public water supplies within the region; and service as a member of the board shall not be deemed as service rendered to any municipal corporation.

3. Appointments to the board shall be made by the department from lists of nominations submitted to it, at the department's request, by the county legislative body or bodies of the county or counties within the region of the proposal. Each list of nominations shall contain fourteen names including two for each of the five representative classes specified by subdivision 2 of this section. Where more than one county is included, the county legislative body or bodies shall make all reasonable effort to agree upon a single list of nominations. The department when making its requests for nominations shall specify a date, fixed so as to permit action on the requests by the county legislative bodies; on or before which such nominations must be submitted, unless the department shall extend such time. The persons so appointed by the department shall within ten days following the date of their appointments and before entering upon the performance of their duties, take and subscribe an oath of office in the manner and form prescribed by law, and shall file the same in the office of the Secretary of State of the state of New York. Each appointee shall notify the department in writing of the date of filing his oath of office. A vacancy shall be filled from the appropriate representative class and in like manner as an original appointment.

4. The board shall hold its first meeting not later than thirty days after the oaths of office of all members have been so filed for the purpose of organization and the appointment of its officers. The board shall select from among its members a chairman, vice chairman and secretary.

5. The board shall be known and transact its affairs as the "..... Regional Water Resources Planning Board" (insert in the name of such board a word or words, chosen by the board at its first meeting, descriptive of the region of the proposal).

6. The members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Vouchers for such expenses shall be prepared on forms provided by the department and shall be approved by the chairman of the board. Such vouchers shall be submitted in duplicate to the department, which shall transmit one copy of each voucher to the Comptroller of the state of New York for payment and shall retain the other copy in its files.

7. The board shall expire and the terms of office of its members shall terminate thirty days after the department has finally approved or disapproved a plan as hereinafter provided in title 11 of this article. However, the department, with the concurrence of the county legislative body or bodies of the county or counties within the region, may terminate the existence of the board and the terms of office of its members at any time it deems it in the public interest to do so; and the department, with the concurrence of the county legislative body or bodies of such county or counties, may continue the existence of the board and the terms of office of its members for a specified additional period of time after the department has finally approved a plan, for the purpose of furthering the objectives of the plan.

8. The board shall hold regular meetings monthly, keep a record of all its proceedings, and determine the rules of its own proceedings.

9. Special meetings may be called by the chairman upon his own initiative and must be called by him upon receipt of a written request therefor signed by at least two members of the board. Written notice of the time and place of such special meeting shall be given by the secretary to each member at least four days before the date fixed by the notice for such special meeting.

10. Four members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings.

11. The board shall request the department within appropriations available to the department therefor, to provide office space and equipment, and to select and employ or retain clerical, technical, scientific, engineering, legal and other personnel and services to assist the board in carrying out its duties and performing its functions under title 11 of this article.

12. The board, using the personnel so selected and employed or retained by the department, shall proceed to investigate, study, examine and survey the water resources of the region of the proposal to ascertain the present uses being made thereof, and to determine the feasibility of their future development by proper conservation and control measures, to provide a greater supply for, and an equitable distribution among domestic, municipal, agricultural, commercial, industrial and recreational users, to the end that the water resources of the region shall not be wasted and shall be conserved and utilized for the beneficial interests of all the people of the state. Particular consideration shall be given to the impounding and retention of flood waters for their future use and distribution.

13. The board may conduct informal hearings and meetings at any place or places within the region for the purpose of obtaining necessary information or other data to assist it in the proper performance of its functions and duties. The board may delegate to any member, to the secretary or to any agent of the board the power and authority to conduct such hearings and meetings, and all reasonable efforts shall be made to ascertain the views, wishes and opinions of the inhabitants of the region.

14. The board and its authorized agents may enter upon any lands as in its judgment may be necessary for the purpose of making surveys and examinations to accomplish its functions and duties under this article, without liability. Liability only for actual damage done during any such entry, survey and examination is hereby assumed by the state and consent is hereby granted to any owner of such lands to pursue his remedy for any such actual damage pursuant to the Court of Claims Act.

15. The board shall cooperate with legislative committees and commissions, and shall make available to such committees and commissions, upon request, any records and other data, and shall file monthly with the department a report of its activities and progress. Upon termination of the board's existence, the board shall deposit all records of its proceedings with the department.

16. The board, based upon its investigations and studies, shall prepare a comprehensive plan or plans for the protection, conservation, development and utilization of the water resources of the region of the proposal, and shall submit the plan or plans to the department for its approval.

§ 15-1107. Plans; approval; changes, modifications and rescission.

1. Plans submitted pursuant to section 15-1105:

a. Shall in all cases be so drawn and of such scope as is best calculated to assure prompt or orderly development of the water resources for the beneficial use of the people of the region involved and of the state as a whole;

b. Shall show the available and feasible sites for the installation and operation of protective, conservation and regulatory works, and the benefits estimated to be derived from such installation and operation. The plan or plans shall be accompanied by such maps, profiles and other data and descriptions as will set forth and show the location and character of the works and of the property required to be taken for or to be damaged by such installation or operation or for the protection and maintenance of the works to be installed, together with an estimate of the cost thereof;

c. Shall estimate the minimum annual amount of water which would be available for all purposes if the plan or plans were to be put in operation;

d. Shall not, in the computations of water estimated to become available as a result of the execution of the plan or plans, include any amount of water, the use of which has theretofore been duly acquired or authorized pursuant to approval, license, permit or other official sanction;

e. Shall, whenever feasible and economically justified, provide for the storage of sufficient water for distribution and use for all the purposes and uses contemplated by this article;

f. Shall not include in any plan or plans, any proposal or project providing for any action or steps which would impair or diminish any right protected by section 15-1113;

g. Shall list possible sources of income, including the sale of water, from the operation of such works, and estimate the amount thereof; and

h. Shall recommend whether the plan or plans should be carried out as a single or multiple stage project, and shall also recommend an agency, existing or proposed, to undertake the project.

2. Upon receipt of a plan from the board, the department shall cause public notice to be given that on a day therein named it will hold a public hearing at such a place as is specified in the notice and within the region covered by the plan, for the purpose of hearing all persons, public corporations and agencies of the state which may be affected by the plan. Such notice shall be published pursuant to subdivision 1 of section 15-0903. In addition to such publication, the department shall give written notice of the public hearing, as required by subdivision 3 of section 15-1103, and may give written notice thereof to additional persons, public corporations or agencies of the state, as authorized by such subdivision. At any time prior to the day specified in such notice, specified objections in writing to the plan or parts thereof may be filed in the office of the department. The department shall, upon the day specified in the notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to take testimony and proof and to hear arguments submitted in support of and in opposition to the plan, but no objectors shall be heard unless they have filed written objections as authorized by this section. At the close of the hearing, the department may fix a date or dates for the filing of briefs.

3. The department within ninety days after the last date fixed for the filing of briefs and with all convenient speed shall render its decision. The department, upon the proofs and evidence submitted at the public hearing:

a. Shall determine whether the plan as proposed by the board conforms to and complies with the purposes of title 11 of this article and would

serve the public interest and benefit, or whether it should be modified in any respect, detail or part to accomplish such purposes;

b. Shall determine whether the plan as proposed by the board interferes or conflicts with the plans of any other regional water resources planning board, and would be just and equitable to the interests of other areas of the state;

c. Shall approve such plan as submitted by the board or as modified by the department; or shall disapprove the plan; or shall remit the proposal to the board for further investigation, study, survey and planning; and

d. Shall recommend with public corporations, private corporations or agencies of the state, existing or proposed, would, in its opinion, be best qualified to carry out expeditiously and efficiently the project proposed by the plan, as approved by the department, and to construct, maintain and operate the works in connection therewith. If the department recommends that a new public corporation or state agency should be established for such purposes, it shall transmit a recommendation to the legislature and the Governor for the enactment of legislation to create and establish such body or agency, or to grant authority to existing public corporations or state agencies.

4. Upon the filing of the departments decision or, in the event such decision is reviewed in the manner provided by article seventy-eight of the Civil Practice Law and Rules, upon the final determination of such review proceeding, the plan as approved by the department or as approved or modified by the court in a review proceeding, shall be the general plan for the conservation, development and utilization of the water resources of the region, and such general plan shall be given consideration by the department in any future application before it and over which it has jurisdiction by virtue of this article or other provision of law. None of the works or projects, included in the general plan, nor any part or parts thereof shall be undertaken, constructed or put into operation until detailed and specific maps and plans therefor have been submitted to the department for approval upon the petition of an agency authorized to undertake or construct such works or projects or parts thereof. The department shall determine, after public hearing, if the detailed and specific plan before it for approval conforms to and is consistent with the general plan, and whether it is in the public interest to undertake the construction and operation of the works or projects as proposed. The department shall have the power to approve or disapprove the detailed and specific maps and plans, or to so modify them as will, on the evidence presented, bring them into conformity with the general plan.

5. Any municipality or combination of municipalities may, except as provided in subdivision 7 of section 15-1103, file with the department a verified petition requesting the department to modify, change or rescind any general plan approved by it. The petition shall set forth the facts on which the petitioner or petitioners rely to show that it is necessary and would be in the public interest to change or modify such plan as requested in the petition, or to rescind such plan. Upon receipt of such a petition, the department shall give public notice of hearing, shall give written notice of hearing to parties and persons, shall hold a public hearing on such petition, and shall take testimony and proof, in the same manner as if the department were holding a public hearing on the original submission of the plan which such petition seeks to change, modify or rescind. The department, within ninety days after the last date fixed for the filing of briefs and with all convenient speed, shall render its decision changing, modifying or rescinding such plan, or

denying the petition, as the public interest shall require.

6. The department may, on its own motion, initiate proceedings to change, modify or rescind any approved plan. The proceedings and procedure with respect to any such proposal, including notice, hearing and judicial review, shall be the same as in the case of a petition for change, modification or rescission of a plan.

7. Except as hereinafter in this subdivision provided, the provisions of sections 15-1109 and 15-1111 shall apply to the sharing and apportionment of costs and expenses incurred by the department under this section. In any case where an application under this section is filed with respect to any plan by any municipality or municipalities outside of the region specified in such plan, the share of the department costs and expenses which would otherwise be paid by the county or counties of such region, shall be paid by such municipality or municipalities.

§ 15-1109. Additional powers and duties of the department.

1. The department shall, if appropriations are available therefor, provide the board with such office space and equipment, clerical, technical, scientific, engineering, legal and other personnel and services as are reasonably necessary to assist the board in carrying out its functions, and shall fix the compensation, within appropriations available therefor, of such personnel. The department may enter into and execute contracts in the manner and form prescribed by law for technical, scientific, engineering and legal services to be made available for the board's functions, and may enter into cooperative agreements with federal agencies for research, the investigation, collection, compilation, study and analysis of information and data on the water resources and the hydrology of the state, and for the preparation and publication of reports thereon.

2. The department shall cooperate with the board and render to it advisory and consultant services whenever practicable.

3. The department shall endeavor to coordinate the activities of existing agencies and departments of the state charged with functions involving waters and to secure their cooperation with and assistance for the board in carrying out its functions, and provide the means for coordination of the studies and development plans of all regional boards;

4. The department shall keep a true and accurate account of all expenditures incurred on behalf of the board including, but not limited to, those incurred for all proceedings, hearings (except the hearing required by section 15-1103), notifications, clerical, technical, engineering, legal and other services and expenses;

5. The department shall, within a reasonable time after the plan has been approved or disapproved, submit an itemized statement of the costs and expenses so incurred and expended to the county legislative body. Notice shall be attached to such statement that, under title 11 of this article, twenty-five per cent of the cost and expenses is a county charge which, if more than one county is involved, is to be equitably apportioned among them; that the counties may by agreement determine such equitable apportionment within sixty days from the date of such notice, and, that in the failure of the counties so to agree, the department, on a specified date after such sixty day period has expired, will hear the counties at its office and proceed to make an equitable apportionment of the county charge;



6. The department shall recommend legislation to accomplish and further the planning and development program of the water resources of the state.

§ 15-1111. Duties of county; county charge; counties included within a city.

1. The county legislative body or bodies shall comply promptly with the departments request for lists of nominations for membership on the board. The county or counties shall cooperate with and assist, so far as is reasonable and practicable, the board in carrying out its functions.

2. Of the total costs and expenses incurred by the department, twenty-five per cent shall be a county charge and shall be audited and paid as such in the manner prescribed by the county legislative body or bodies. If more than one county is included within the region of the project, the county charge of twenty-five per cent shall be equitably apportioned among them, consideration being given to, but not limited to, prospective benefits to accrue to each in the event that the project is undertaken. If the counties fail to agree within sixty days after the statement of costs and expenses from the department upon an equitable apportionment of the county charge, the department after hearing the counties, shall make such apportionment.

3. With respect to any or all of the counties within the city of New York, except as provided and limited by subdivision 7 of section 15-1103:

a. All rights, powers and privileges granted to, and all duties, obligations and charges imposed upon any county by the provisions of title 11 of this article, are granted to or imposed upon such city; and

b. All rights, powers and privileges granted to the county legislative body of any county by the provisions of title 11 of this article (including, but not limited to the power to approve a petition for a survey and study and establishment of a regional planning board) and all duties and obligations imposed upon any such county legislative body by title 11 of this article, are granted to or imposed upon the board of estimate of such city.

§ 15-1113. Existing rights and remedies preserved; limitations.

1. Nothing in title 11 of this article is intended to or shall be construed to alter, impair, diminish or enlarge any existing or hereafter acquired public or private right, riparian or otherwise, or to create any new public or private right, riparian or otherwise, with reference to water resources and the use of the waters thereof and such rights hereby preserved shall include, but not be limited to any such right of the state or any agency thereof or any person or public corporation. Any reference in this section to a public or private right with reference to water resources and the use of the waters thereof shall include, but shall not be limited to, any right to receive, collect, store, control, transmit, consume, supply, sell, discharge or dispose of water, any right to own, construct, operate and maintain any water supply or water treatment facilities, including reservoirs, dams, aqueducts, chlorinating and aeration plants and pumping stations, and any right to exercise control over the level, flow, discharge or disposition of waters, including water in reservoirs, rivers, streams and aqueducts.

2. Nothing in title 11 of this article is intended to alter or abridge

any right of action or other remedy now or hereafter existing nor shall any act done by virtue of title 11 of this article be construed as estopping the exercise of such rights.

3. Nothing in title 11 of this article shall be held to repeal, limit or modify the jurisdiction, powers and duties of any state or local department, board, district, commission or authority, or any public corporation, or other agency, now or hereafter possessed, or to invalidate or modify, in whole or in part, any decision, order, license, permit, approval, or other act, issued or taken heretofore or hereafter by such department, board, district, commission, authority, or public corporation or other agency, or to nullify, abate or otherwise affect any rights acquired or action taken heretofore or hereafter pursuant to such decision, order, license, permit, approval, or other act.

4. Nothing in title 11 of this article shall be construed as requiring that a plan hereunder be approved for any region before any project utilizing, affecting or involving the water resources of such region in whole or in part may be authorized, approved, initiated or carried out within or without such region.