

# Environmental Conservation

## ARTICLE 15 WATER RESOURCES

### TITLE 19 DRAINAGE

- Section 15-1901. Purpose.
- 15-1903. General provisions and definitions.
- 15-1905. Drainage improvement districts.
- 15-1907. Drainage improvement associations.
- 15-1909. Entry upon lands, structures and waters; condemnation.
- 15-1911. Petition for formation of district.
- 15-1913. Proceedings on petition.
- 15-1915. Proceedings for formation of district.
- 15-1917. Surveys and maps.
- 15-1919. Drainage enhancements.
- 15-1921. Proceedings on enhancements.
- 15-1923. Plans and estimates.
- 15-1925. General apportionment of cost.
- 15-1927. Proceedings on general apportionment of costs and final fixation of boundaries.
- 15-1929. Corrections and revisions of statements of enhancements.
- 15-1931. Procedure for authorization of construction.
- 15-1933. Construction.
- 15-1935. Contracts.
- 15-1937. Operation and maintenance.
- 15-1939. Special apportionment of cost.
- 15-1941. Major repairs of drainage works.
- 15-1943. Minor repairs in drainage districts.
- 15-1945. Minor repairs in existing drainage ditches.
- 15-1947. Unlawful interference with drainage works.
- 15-1949. Removal of beaver.
- 15-1951. Financing of improvements.
- 15-1953. Drainage improvement district fund.
- 15-1955. Proceedings for assessment and collection of cost.
- 15-1957. Drainage fund.
- 15-1959. Corrections and revisions of assessments, determinations of drainage enhancements and apportionment of costs.
- 15-1961. Drainage district with federal aid.
- 15-1963. Formation of district with federal aid.
- 15-1965. Construction project.
- 15-1967. Changes in project.
- 15-1969. Continuation of district.
- 15-1971. Transfer of property and discontinuance of district.
- 15-1973. Drainage section association; definitions.
- 15-1975. Drainage section association; creation.
- 15-1977. Articles of association; recording and filing.
- 15-1979. First annual meeting; members; officers; by-laws.
- 15-1981. Powers of association; limitations; voluntary dissolution.
- 15-1983. Drainage of agricultural lands; procedure.

§ 15-1901. Purpose.

To provide for the drainage of agricultural land to the end that it may be made more productive, and in order to benefit the public health, safety and welfare, the department shall possess the powers and exercise the duties hereinafter prescribed in respect to drainage.

§ 15-1903. General provisions and definitions.

The following words and phrases used in this title 19, when not otherwise specified, are defined or indicate procedure, as follows:

1. Filing. Wherever it is required that copies of maps and documents be filed, certified copies thereof shall be filed in the offices of the clerks of each county, town, city or incorporated village, any part of which is included in the district or proposed district.

2. Recorded. Whenever it is required that any document be recorded, the department shall send a certified copy thereof to the clerk of each county, any part of which is included in the district or proposed district, and it shall be the duty of such clerk thereupon to record such document and to collect the legal fees therefor.

3. Costs. Whenever it is practicable so to do, the department shall include in the cost of any surveys, maps, estimates, determinations of enhancements, apportionments of cost or assessments made, or construction, maintenance or repair work carried out, the cost of all proceedings, hearings, notifications, filings, recordings, engineering, legal and other services and expenses which may lawfully be incurred, including the cost of acquisition of lands and rights of way, suits and prosecutions.

4. Notice. Unless otherwise specified, notice of a hearing, contemplated act or of an act performed shall be given as provided in section 15-0903.

5. Assessment. As used in title 19 of this article the term assessment shall mean the whole or any appropriate part of the procedure by which the cost of any proceeding or construction project is made a legal charge on certain properties. It may include the determination of enhancements and apportionment of construction and other costs. It includes similar proceedings once specified in earlier forms of title 19 of this article, or in former or other general and special laws with regard to drainage.

6. Initiation of proceedings. It is the intent of title 19 of this article that petition may be made to the department to make any survey or investigation or do any work that may fall under the purposes of title 19 of this article notwithstanding the special provisions hereof and that, if it is advisable or advantageous so to do, more than one procedure may be carried on at the same time or may be followed out with respect to a part rather than the whole of the district. Should such petition not fully conform as to subject matter with the following sections, the department is empowered nevertheless to give the relief desired by following the specified procedure as nearly as may be and to assess the cost of such investigations or work on the properties surveyed, investigated, appraised, included in an apportionment or improved in such manner as may be found most equitable and to conform most nearly with the specific provisions of title 19 of this article. Any procedure under this title 19 which may be initiated by petition may also be initiated by the department on its own motion. In such case the department shall adopt an initiating resolution which shall have the same force and effect as a petition.

7. Served by. A parcel of land is served by any ditch or structure useful for the drainage thereof. Thus any ditch which actually drains the parcel or which intercepts and carries away water which otherwise would reach the parcel, or any ditches which carry water collected by such drainage or intercepting ditches serve such parcel.

§ 15-1905. Drainage improvement districts.

1. Bodies corporate which shall consist of and be known as drainage improvement districts may be created as herein provided to carry out the purposes of title 19 of this article. Such drainage improvement districts are declared to be public corporations and shall have perpetual existence and the power to acquire, hold or sell such real estate or other property as may be necessary, to sue or be sued, to incur contract liabilities, to exercise the right of eminent domain, and of assessment and taxation and to do all acts and exercise all powers necessary to accomplish the purposes of title 19 of this article. Such powers shall be exercised by and in the name of the district. The governing body of the district shall be the department.

2. The debts, liabilities and obligations incurred by a drainage improvement district shall in no event be construed as debts, liabilities or obligations of the State of New York, and neither the department, nor any member thereof in his individual capacity shall be liable therefor. All drainage improvement districts heretofore formed under the provisions of this chapter or its predecessor, the Conservation Law, are hereby declared to be such bodies corporate and all the provisions of title 19 of this article shall be applicable to such drainage improvement districts.

3. Drainage improvement districts generally shall include all such portions of a natural drainage basin as should be treated as one project on the assumption that all lands in such basin needing drainage are to be improved. The department may form a portion of such basin into a district, on the assumption that the district may later be extended to include the whole basin, but, in so far as may be possible, in that case the district formed shall be so laid out that all lands which eventually will drain into or be served by any part of the district works other than the main drainage channel, shall be included therein. It is intended that the boundaries of the district shall include all lands which would be enhanced in value by the construction of complete drainage works therefor and that land, the value of which will not be enhanced, shall be excluded, but in order to simplify the boundaries of the district certain relatively small areas of land not so enhanced may be included on condition that they bear no part of the cost of any improvement work.

§ 15-1907. Drainage improvement associations.

1. There shall be in each drainage improvement district an association to be known by the name of the district, as ..... Drainage Improvement Association. It shall be the object of this association to represent the interests of its members in drainage matters before the department and elsewhere and to serve as a channel of communication between the members thereof and the department. Each owner of land within the district, each lessee of such land and each person who has contracted to purchase such land shall be a member of and shall have an equal vote in the association. Such association may be formed

voluntarily as soon as the department has filed its first description of the boundaries of the district. As soon as practicable after recording the final order creating a district, the association, if already formed, shall call a meeting of the members of the association and perfect a permanent organization.

2. If no association has been formed, the department may call a meeting for the purpose of forming such association and a representative of the department shall preside thereat until a temporary chairman is elected. Such association shall adopt by-laws for the transaction of its business. The association shall choose from among its members a president, secretary and executive committee and such other officers and committees as the by-laws may provide. It shall be the duty of the secretary to keep a list of the members and their addresses and to furnish the department with copies of such list on request. The annual meeting of the association shall be held during the month of February in each year, at which meeting the officers shall be elected and the association shall determine upon the drainage maintenance or construction work desired during the ensuing year.

3. Immediately after the close of the annual meeting the secretary of the association shall submit to the department a list of the names and addresses of the officers for the year and, if there be such, petitions setting forth the desires of the association and of the members thereof.

4. To defray the costs of the necessary meetings, the association may collect dues or contributions from its members.

§ 15-1909. Entry upon lands, structures and waters; condemnation.

1. For carrying out the surveys and examinations required by title 19 of this article, the department may enter upon any lands, structures and waters as in its judgment may be necessary, as provided by section 15-0305.

2. The department, its members, officers, employees and agents may enter upon any lands, structures and waters necessary for the purposes of title 19 of this article and may determine what rights in and to such property are to be acquired therein. If the owner of any property to be acquired, or on or over which an easement is needed for such improvement shall agree with the department upon the sum to be paid therefor, or for the right to use and occupy the same, or for any damages sustained, such sum shall be paid as part of the necessary expense of the project.

3. If the department cannot agree with the owners upon the compensation and damages to be paid for the property or easement to be acquired, the department shall proceed to take the title thereto or the required rights therein under the provisions of the eminent domain procedure law.

4. Whenever a construction project affects a ditch or channel which has been constructed and in use for twenty years and upwards such use and operation shall be conclusive evidence that a right of way therefor and all rights in the premises through which it passes, which are necessary and incident to the perpetual maintenance thereof, were duly obtained when such ditch or channel was constructed. All real property acquired by a drainage improvement district shall be exempt from taxation.

§ 15-1911. Petition for formation of district.

1. Any three or more persons possessing swamp, bog, pond, meadow, or

other low or wet lands or any lands in the vicinity thereof, or any public corporation in which such lands are located, or in the vicinity of such lands, may present to the department a verified petition praying for the formation of a drainage improvement district.

2. Such petition shall set forth:

a. The proposed name of such district, as the ..... Drainage Improvement District.

b. The facts showing that the swamp, bog, pond, meadow or other low or wet lands are a menace to the public health, safety or welfare and that it is necessary for the conservation of the public health, safety or welfare to drain or improve such lands by the construction of such drains, ditches, channels, dams, dikes or other works, through or upon such lands or through or upon the lands of others, so far as necessary for any or all of such purposes.

c. A general description of the lands to be included in the proposed district.

d. A general statement of the benefits which will inure from the formation of such district and the drainage of such lands.

§ 15-1913. Proceedings on petition.

1. On receipt of a petition for the formation of a district the department shall make such preliminary investigation of the proposed district as it may find to be suitable and prepare a report thereon. Such report shall describe tentative boundaries for the district, shall contain a preliminary discussion of the present conditions, possible measures of relief, approximate cost of necessary drainage works, possible benefits and advantages therefrom, shall give an estimate of the cost of the surveys and all proceedings necessary for and including final fixation of boundaries of the district and shall set forth the recommendations of the department with regard to the formation of the proposed district.

2. Such report shall be filed and notice of such filing and of a hearing thereon given. Such notice, among other things, shall state the estimated cost of the surveys and all proceedings necessary for and including final fixation of boundaries of the district and that, should such proceedings be fully or partially completed, such cost will be assessed in one year upon the lands in the district at a uniform amount per acre of such lands.

§ 15-1915. Proceedings for formation of district.

1. At the hearing the department shall hear all persons affected by the formation of the proposed district. The department may change the tentative boundaries of the proposed district, but in that case a new hearing shall be held thereon after due notice thereof.

2. After the final hearing the department shall determine whether or not the tentative boundaries as described include all the lands which should be included in the district and exclude as far as is reasonably possible all lands which will not be benefited by drainage; whether or not the lands included therein will be made more productive by drainage, the public health, safety or welfare will be benefited thereby and it will be to the public interest to form the drainage improvement district and carry out further proceedings for final fixation of boundaries or whether the application should be rejected. It shall embody such determination and disposition of the case in a written order, which

shall be filed and notice of such filing given.

3. If the decision is favorable, such order shall declare the district to be formed and shall direct the making of surveys and the taking of the remainder of the proceedings for final fixation of boundaries for the district all as provided by sections 15-1917 to 15-1927, inclusive. Thereupon the order may be reviewed as provided by section 15-0905, and in due course shall be recorded.

4. The district shall be held to have been formed on the date of such order, but such formation shall not be effective until such order, as made or modified on review, shall have been recorded.

#### § 15-1917. Surveys and maps.

1. The department may proceed to make such survey of the district as may be found to be necessary. It shall prepare maps of such district showing natural and artificial features as may be needed, the boundaries of the district, the boundaries and area of each parcel of land in the district together with the name of the owner thereof so far as the same readily may be ascertained. When a parcel is intersected by a county, town, village or city line, the area in each such political subdivision shall be given. Each parcel of land or each subdivision thereof shall be designated by a number. In the course of the proceeding further subdivision of parcels may be made if necessary or convenient.

2. The department may then determine the enhancement accruing to each such parcel due to drainage as provided in sections 15-1919 and 15-1921, prepare designs and estimates for drainage works as provided in section 15-1923, prepare a general apportionment of cost as provided in section 15-1925 and 15-1927, and fix the final boundaries of the district as provided in section 15-1927.

#### § 15-1919. Drainage enhancements.

1. For the purpose of making apportionments of the cost of future drainage construction, allowing credits for such construction already completed, determining the economic feasibility of a contemplated construction project and for other purposes, there shall be determined for each parcel of land in a district what is called the drainage enhancement for such parcel.

2. Drainage enhancement is a special form of assessed valuation made for the purposes of title 19 of this article and used only as such. Such enhancement is determined solely on the basis of estimated land value without consideration of certain specified conditions and is not dependent on or made in connection with any specific drainage construction project, completed or proposed. The drainage enhancement of any parcel of land is the increase in the value of such parcel which, on the basis of prices of land locally current at the time the determination is made, will occur as the result of improving that parcel by drainage works from its original undrained condition to the maximum condition of drainage which is practical. It is the maximum benefit which can inure to an undrained parcel by drainage to the practical limit, is the measure for the apportionment of the cost of such complete drainage construction and, as among other parcels, is the relative measure of benefits resulting from the construction of works giving a less complete drainage. Such enhancement, once determined, will remain fixed until such time as a general change in local land values is experienced.

3. The value of each parcel shall be determined (a) on the assumption that no drainage work has ever been done in the district and (b) on the assumption that the land is drained to the maximum practical extent. The difference is the drainage enhancement. In making these determinations it shall be assumed in both instances that the land is devoted to the highest use for which it will be fitted by drainage regardless of the fact that it may have to be cleared or otherwise prepared for such use, unless it can be shown that drainage will affect the cost of such clearing and preparation in which case due allowance shall be made therefor. If a parcel contains lands of different values it may be subdivided and the enhancement determined for each subdivision.

4. The department may appoint persons as assessors to assist in the determination of such drainage enhancements.

5. These "drainage enhancements" are the same as the "benefits due to drainage" specified in earlier forms of article VIII of the Conservation Law, and "drainage enhancements" specified in article V of the Conservation Law as it read on the date of the enactment of the present chapter, and any such "benefits" heretofore determined shall remain unchanged by this amendment, but shall, after this article takes effect, be known and used as "enhancements."

#### § 15-1921. Proceedings on enhancements.

1. The drainage enhancements shall be set forth in a statement signed by the department, which together with the map of the district shall be filed and notice of a hearing thereon at which grievances will be heard shall be given. At such hearing objectors shall be heard as to the property lines shown on the maps and the drainage enhancements shown on the statement thereof.

2. After the close of the hearing the department may amend both maps and statement, adopt the statement in final form and shall file such amended maps and final statement and give notice of such filing. Thereupon such amended maps and final statement shall be recorded when and as provided in section 15-1927.

#### § 15-1923. Plans and estimates.

The department may make a study of the works necessary to drain the district and prepare maps, plans, estimates and reports showing a complete system of drainage therefor, the estimated cost of the various ditches and other works and parts thereof and the boundaries of the land which will be served by and therefor should contribute to the cost of each structure. These estimates of costs shall be made on the assumption that no drainage work has ever been done in the district. In addition the department may show on the plans any drainage work which has heretofore been done in the district, may estimate the cost of those works on the same basis used for the estimate of the cost of the proposed system and in similar manner may determine the boundaries of the land served by the existing ditches.

#### § 15-1925. General apportionment of cost.

1. A general apportionment of the cost of the complete system of drainage shall be made as herein described. The total cost determined under the provisions of section 15-1923 shall be equitably apportioned

on the various parcels of land in the district and on such public corporations as the department may find to be justly chargeable with a part of such cost in addition to what might be apportioned to them as owners of property in the district. Such charge on a public corporation shall be expressed as a percentage of the whole cost and only the remaining percentage of the cost shall be apportioned on the individual properties.

2. The general theory of such apportionment shall be that any parcel using or served by any ditch or part of a ditch shall share in the cost of that ditch or part and that share shall be in proportion to the drainage enhancement of that parcel already determined as set forth in section 15-1919 as compared with the sum of such drainage enhancements of all the parcels using or served by the same ditch or part of a ditch, but such strict rule may be modified should it lead to inequitable results.

3. The department may divide the whole drainage system into individual ditches and appropriate parts of ditches, estimate for each ditch or part the total cost thereof, determine the boundaries of the lands which would use or be served by that ditch or part, subdivide the previously determined drainage enhancement of each parcel which may be subdivided by such boundaries and apportion the total cost of each ditch or part of a ditch accordingly. Finally all amounts apportioned to any one parcel shall be added together and compared with the drainage enhancement of that parcel. Should the total cost apportioned to any parcel exceed the drainage enhancement of that parcel, the design of the drainage system or the boundaries of the district shall be changed in such manner that for no parcel shall the costs exceed the enhancements. The department may make a similar apportionment of the cost determined under the provisions of section 15-1923 for such drainage works heretofore done which in its opinion are useful and may be incorporated into the complete system of drainage.

§ 15-1927. Proceedings on general apportionment of costs and final fixation of boundaries.

1. The department shall prepare and sign a statement of the general apportionment of cost and shall file it together with the maps, reports and estimates on which it was based and shall give notice of a hearing thereon. At the hearing the department shall consider and hear objections to the various matters covered by sections 15-1923 and 15-1925.

2. After the hearing the department shall make such revisions as it may find to be proper, shall adopt the maps, plans, estimates, boundaries and general apportionment in final form, shall file such papers and give notice of such filing. Such general apportionment in final form shall include an order fixing the final boundaries of the district. Thereupon these matters may be reviewed as provided by section 15-0905 and, if not so reviewed within sixty days after date of filing, such apportionment shall be final and conclusive and shall be recorded together with the final statement of drainage enhancements. Thereafter such apportionment in final form and the boundaries of the district shall be fixed and determined. At the same time or as a separate proceeding the apportionment of the cost of older drainage work may be considered, heard, reviewed and recorded in like manner.

3. Thereafter all costs incurred by the department for surveys and all proceedings necessary for and including final fixation of boundaries of

the district shall be apportioned on all parcels of land included in such district in proportion to the areas of such parcels of land and shall be collected on one assessment roll. Should the proceedings necessary for and including final fixation of boundaries of a district for any reason be abandoned or discontinued such costs shall, notwithstanding such action, be assessed on and collected from the lands within the boundaries of the district as fixed at the time of such abandonment or discontinuance as herein provided.

§ 15-1929. Corrections and revisions of statements of enhancements.

Should it be found necessary to correct or to revise any statements of enhancements due to drainage, general apportionment of cost, general plan for drainage works, estimates of cost of drainage works, boundaries of districts, boundaries of lands assessable for various portions of the work or any other matter above treated, such corrections and revisions may be made either upon petition or on motion of the department by following the procedure for each case as above set forth in so far as it can be made to apply.

§ 15-1931. Procedure for authorization of construction.

1. Petition may at any time after the final fixation of boundaries of a drainage improvement district be filed with the department asking that all or a part of the proposed drainage system be constructed. If the work desired is not shown on the plans filed or differs from that so shown or if the cost of the work shall have changed, the department shall on request of the association or of the executive committee thereof make plans of such work, estimate the cost thereof and make tentative determination of the lands on which the cost of such work should be apportioned, making suitable subdivision of parcels and the enhancements thereto, if necessary.

2. Such petition must be in writing, signed and acknowledged in the manner of a deed to be recorded, by a majority of the owners of the property to share in the cost of the work and representing at least half of the total of the drainage enhancements of such property as shown by the recorded statement of enhancements, with subdivision of parcels made as above. The petition shall specify what part or parts of the work it is desired shall be built and the estimated cost thereof as the department may have determined.

3. On receipt of such petition the department shall prepare a description of the proposed work and a special apportionment of the cost thereof, shall file such statement and apportionment and, after due notice, shall hold a hearing thereon. Thereafter the department shall determine as to whether or not it is to the public interest to proceed with the work. The department may approve or reject the application or modify it and, if necessary, return it for further signatures or require a new petition to be filed in lieu thereof.

4. If the application is approved the approving order shall fix the boundaries of the land on which the cost is to be apportioned and the apportionment of such cost in final form shall be attached thereto. Certified copies of the order and apportionment in final form shall be filed and notice of such filing given. Thereupon such order and apportionment may be reviewed as provided by section 15-0905 and in due course shall be recorded.

§ 15-1933. Construction.

1. In general all construction work shall be done by contract, but in the event that the estimated cost of such work or of a specified portion thereof shall not exceed the sum of twenty-five thousand dollars, the department may, on the recommendation of the Commissioner of Transportation, authorize the Commissioner of Transportation to do such work or part of such work by days' work under his direction.

2. All costs of supervision and inspection of construction work, costs of making surveys, plans and estimates in connection therewith and the costs of taking title to property and any other costs which may be incurred in connection with or incidental to such work shall be considered a part of the cost of such improvement.

§ 15-1935. Contracts.

1. The department may prepare contracts, plans and specifications for doing such work and furnishing the necessary materials. The work may be divided into several parts and a separate contract let for each. Each contract shall contain a provision that no extra or unspecified work shall be certified for payment unless such work is done pursuant to written order of the department. The form of such contract shall be approved by the Attorney General. Contracts shall be executed in triplicate by the department on behalf of the district.

2. Bids or proposals for any such contract work shall be called for by publishing a notice thereof once a week for two successive weeks in a newspaper published in each county affected by the proposed works, which the department shall select, and in such other papers as the department shall direct. The advertisements shall be limited to a brief description of the work proposed to be let with an announcement stating where the maps, plans and specifications are on exhibition, of the terms and conditions under which bids will be received, the time and place when the same will be opened and such other matters as may be necessary to carry out the provisions of title 19 of this article.

3. The Department of Transportation is authorized to furnish copies of such contract plans and specifications to prospective bidders at a price which it shall find to be reasonable. Every bid or proposal must be in writing and be accompanied by a money deposit in the form of a draft or certified check upon some national or state bank or trust company within the state in good credit and payable at sight to the department for five per cent of the total amount of the proposal. In case the proposer to whom such contract shall be awarded shall fail or refuse to enter into such contract within the time fixed by the department, such a deposit shall be forfeited to the department and paid by it into the drainage improvement district fund; otherwise such deposits shall be returned.

4. The proposals received pursuant to the advertisement shall be publicly opened and read at the time and place designated. The department may reject any or all bids and readvertise and award the contract in the manner herein provided whenever in its judgment the interests of the district will be benefited thereby. No contract, the total of which exceeds by more than ten per cent the gross cost of the work as estimated by the department, shall be awarded. The contract shall be entered into with the person who shall offer to do and perform the same at the lowest price and who will give adequate security for the faithful and complete performance of the contract. Such security shall be approved as to character and sufficiency by the department and as to form by the Attorney General and shall be at least ten per cent of the

amount of the estimated cost of the work according to the contract price.

5. If in the judgment of the department, the work upon any contract is not being performed according to the contract, or for the best interests of the district, it shall have power to suspend or stop the work under such contract while it is in progress and it shall thereupon become the duty of the department to complete the same in such manner as will accord with the contract specifications and be for the best interests of the district, or the contract may be cancelled and readvertised and relet in the same manner above prescribed and any excess in the cost of completing the contract beyond the price for which the same was originally awarded shall be chargeable to and paid by the contractor failing to perform the work. Partial payments for work actually done may be provided for in the contracts and paid in the manner hereinbefore provided to an amount not to exceed ninety per cent of the contract price. The payments due on account of any such contracts, or for necessary expense or work in connection therewith, shall be paid from the drainage improvement district fund as hereinafter provided.

§ 15-1937. Operation and maintenance.

1. The care, operation and maintenance of the drainage works in a drainage improvement district shall be subject to the control and supervision of the department. It shall be the duty of the department, within the limit of the funds made available for that purpose, to maintain the drainage works in the district in serviceable condition.

2. The drainage association shall consider and make recommendations with regard to extensions and maintenance work annually and the department may make recommendations with regard thereto to be submitted to the association for discussion.

3. For such maintenance work the department is authorized to hire employees, purchase or rent land, buildings, tools, machinery or supplies, to let work by contract or to carry out projects by day labor.

4. The procedure to be followed for the authorization, financing and assessment of the cost of such work purchases shall be that specified in sections 15-1941 or 15-1943, whichever is applicable, or the proceedings may be initiated by the department of its own motion. In cases where a permanent maintenance or operating force is necessary, the department may annually prepare a maintenance budget which shall be treated as a repair project under section 15-1943.

§ 15-1939. Special apportionment of cost.

1. The special apportionment of the cost of a construction project, be it new construction, enlargement, repair or maintenance, must be based on the benefits derived from the work. This will conform to that part of the general apportionment applicable to the particular ditch or part of a ditch under consideration unless the department shall determine otherwise. It is the intent of title 19 of this article that in the interest of justice and equity and best to meet the needs and desires of the owners of the property affected, the department may exercise some latitude in the application of the rules herein set forth and, without excluding other departures therefrom, the following are required or authorized:

a. If a parcel previously has been assessed for drainage improvements which will continue to be useful for the drainage thereof due allowance

shall be made therefor. The apportionment of the cost of previous work, already made, will be used for this purpose, but may be modified to give due consideration to actual records of cost, if such can be discovered. If the present owner of such parcel has contributed labor, materials, or money to any such drainage work the department may make such allowances therefor as it finds to be just and proper.

b. If any parcel is uncleared or otherwise not immediately fit for the raising of crops, the department may make a reasonable adjustment based on the minimum time required with all due diligence to fit such parcel for such use.

2. Except by special request of the owner the capital cost of all past and future work serving a parcel shall not exceed the total drainage enhancement of that parcel.

3. Any ditch may on due petition therefor be excavated to less than full size if certain groups of properties eventually to be served by it do not desire at that time to share in the cost thereof. In that case it shall be unlawful for such properties to be drained until the owners thereof have had suitable enlargements of the outlet ditches made at their expense. If the petition shall so ask, a ditch, in the cost of which only a part of the properties eventually to be served asked to participate, may be made to full dimensions and the cost apportioned on the participating lands only, provided that the petition clearly so states and is signed by at least two-thirds of the owners of the lands to share in the cost representing at least two-thirds of the total enhancements to such lands. In that case the lands not sharing in the cost shall not be drained until the owners thereof have asked that their share of the cost be apportioned to them and such apportionment has been made as provided above and the department shall have made suitable provision for reimbursement or credit to the persons at that time owning the property which bore the cost of such improvement in the first instance.

4. The costs of making such special apportionment of cost and proceedings thereupon shall be included in the cost of the work, or should the work be delayed or not carried out, they shall be assessed on one assessment roll on the participating lands in accordance with the apportionment made.

§ 15-1941. Major repairs of drainage works.

1. Major repairs, alterations, extensions and improvements of drainage works for a drainage improvement district may be made by the department on petition therefor and after procedure thereon similar to that specified in section 15-1931 for original construction. If additional surveys are required, they may be authorized as provided in sections 15-1911, 15-1913, 15-1915 and 15-1917, except that the cost of surveys and other expenses may be included in the cost of the improvement and assessed on the properties to be served thereby in accordance with the apportionment of cost of the repairs.

2. Except where the department shall otherwise determine, the cost of improvements and repairs to a ditch already built under the provisions of title 19 of this article, or of any former drainage laws, shall be apportioned in the same manner as the original cost was apportioned, but the department may make a new apportionment by following the procedure above specified.

§ 15-1943. Minor repairs in drainage districts.

1. Application for the repair, enlargement or cleaning out of any ditch originally constructed or repaired by assessment under the provisions of title 19 of this article, or any former general or special drainage laws, if within a drainage improvement district and if the total cost thereof shall not exceed two per cent of the total of the drainage enhancements of all parcels served by such ditch, may be made by any three or more persons liable to be assessed therefor. Such application shall be made by written petition, verified by at least one of the signers thereof, setting forth the work desired, the estimated cost thereof and the need therefor.

2. On receipt of such petition the department shall cause an examination to be made of such ditch or ditches, an estimate of the cost of such repairs and improvements and a special apportionment of the cost thereof to be prepared, and shall file a statement of these matters. Thereafter, after due notice, the department shall hear all interested parties with regard thereto. The filing of written objections shall not be required. If after the hearing the department shall determine that the work can be done under this section, is necessary and is desired by the owners of the lands involved, it may proceed to make such repairs or enlargements. The cost of such repairs and expenses of the hearing and examination generally shall be apportioned upon the properties served by the work in accordance with the general or a previous special apportionment of the cost of such ditch or part of a ditch.

3. If the department shall find that changes should be made in the apportionment, or, for any other reason, that the work should not be done under the provisions of this section, it may so specify in its order, giving its reasons therefor, and return the case to the applicants for further petition. Money to pay for such work shall be raised pursuant to the Local Finance Law and as elsewhere herein provided. The whole cost of such work shall be collected within not to exceed three years from the date of completion of the project as may be determined by the department.

§ 15-1945. Minor repairs in existing drainage ditches.

1. Repairs of a minor nature may be made to ditches heretofore constructed by assessment under the former drainage law, or the laws from which it was derived or under the provisions of this or any other general or special law by following the procedure set forth in section 15-1943 so far as it is applicable. The total cost of such repairs shall not exceed the sum of five thousand dollars on any one ditch for work done under one proceeding. The cost of such work shall be paid for out of the drainage fund provided by section 15-1957 hereof.

2. When such repairs or enlargements shall be finished, it shall be the duty of the department to make up an itemized account of the cost incurred in the making of such repairs or enlargements and to file the same as provided in section 15-1955 and such cost shall thereafter be assessed and collected within not to exceed three years as therein provided and as further provided herein. The expenses of such repairs and enlargements shall be apportioned among the premises to which were originally apportioned the cost of construction of such ditch or ditches, as shown by the apportionment made for such original construction and filed in the county clerk's office or elsewhere according to the valuation thereof on the last completed assessment roll or the drainage enhancements thereof, if such have been determined.

3. In case any public corporations have contributed to the construction of such ditch or ditches, such public corporations shall be liable for the repair or enlargement of the ditch or ditches, in the same proportion that they were originally assessed for the construction of the same, which shall also be levied and collected out of the taxable inhabitants of such public corporation in the same manner that other taxes are levied and collected in the corporation.

§ 15-1947. Unlawful interference with drainage works.

1. It shall be unlawful for any person to divert water from its natural watershed in such manner that it flows into a drainage district, or so to divert water in a drainage district as to prevent it from following the course laid out for such water by the department and cause it to flow into any stream, ditch or ditches into which it does not naturally or was not designed to flow.

2. It shall be unlawful for any person without authorization to interfere with, fill up, alter or change any drainage ditch or other structure constructed under the provisions of title 19 of this article or lawfully constructed under the provisions of the conservation or the drainage laws or any other general or special statutes, or without authorization to open or close gates or other regulating works in connection therewith or to construct unauthorized ditches or drains or other interference. This shall not be held to prevent the private construction of drainage works within a district, provided that such construction is done in accordance with plans approved by the department and with its written consent.

3. It shall be unlawful to build or maintain across or in such drainage ditch any bridge or culvert which unduly impedes the flow of water in such ditch. No bridge or culvert across or in any drainage channel or ditch within or without a drainage district and necessary to the proper drainage thereof, shall hereafter be built, rebuilt or altered by any person or authority except with the written consent and approval of the department.

§ 15-1949. Removal of beaver.

In the event that any drainage improvement district is inhabited by or is invaded by beaver and the work of those animals interferes with the proper operation of the drainage system, the commissioner may cause such beaver to be removed or destroyed as he shall determine.

§ 15-1951. Financing of improvements.

1. For defraying the costs of all proceedings, surveys, studies and construction projects authorized by any section of title 19 of this article, the department may raise funds pursuant to the Local Finance Law. Such funds may not be borrowed unless the proceedings authorizing such expenditures have become final.

2. In addition the department is authorized in the name of the district to apply for, receive and expend funds or services which may be granted or contributed for the purpose by the federal government or other public authorities or by private persons or organizations. Obligations issued for such purpose shall not be construed in any event as obligations or indebtedness of the state, and neither the state, the department or any member thereof personally shall be obligated to pay

the principal or interest therefor. Bonds issued for such purpose shall be lawful investments for savings banks, trust companies, executors and trustees and for any of the funds of the state which by law may be invested.

3. The proceeds of such bonds shall be deposited in a national or state bank or trust company either in Albany or in one of the counties in which such improvement is made, to be designated by the Comptroller. Before any such deposit is made, the Comptroller shall require from the depository security for the repayment of the same to the department upon demand of the moneys so deposited in the manner provided in section 106 of the State Finance Law.

§ 15-1953. Drainage improvement district fund.

Moneys received under the provisions of title 19 of this article shall constitute a fund to be known as the drainage improvement district fund, and the portion thereof applicable to each improvement shall be separately kept by the Comptroller, and the Comptroller is authorized and directed to pay therefrom the principal and interest of such obligations as the same mature and become payable by the terms thereof, and the costs and expenses of such improvement and the maintenance thereof upon the order of the department or the authorized officer thereof.

§ 15-1955. Proceedings for assessment and collection of cost.

1. Except as otherwise provided by law, all costs and expenses necessary for the formation, improvement and maintenance of a drainage improvement district shall be met from funds collected from the owners of lands benefited or affected or from public corporations as provided in title 19 of this article. The fiscal year shall start on the first day of July.

2. On or before the first day of July each year the department shall prepare and file for each existing or proposed district having outstanding indebtedness or for which the borrowing of money has been authorized, an itemized statement of the amounts that must be collected on the tax roll to be prepared that year to meet the fiscal obligations of the district for the following fiscal year, including retirement of outstanding or contemplated evidences of indebtedness, interest thereon, repayments to the drainage fund and all other costs of whatever name or nature. Such statement shall set forth separately each project or parts of a project or other items in such manner as to facilitate the preparation of the tax rolls as herein provided. The total of each such item shall further be subdivided to show the amount thereof to be paid by each county, town, city or village and the amount to be levied on the individual properties. This last amount shall be further subdivided to show the total amount to be levied and collected in each county, town, city or village, all as previously determined by the department.

3. Such statement shall be approved as to the various amounts by the Comptroller. Certified copies of each statement shall be filed with the Comptroller, with the clerk of the county legislative body, or such other similar official as shall have been designated by the county legislative body, the clerk of each town and the clerk of each city or village affected thereby.

4. The amount shown on each statement to be due from any county, town, city or village shall be by such municipality assessed, levied and

collected in the same manner as provided by law with reference to general taxes and paid to the treasurer of the county, who shall forthwith forward the same to the Comptroller to be paid by him into the drainage improvement district fund applicable to such district or proposed district or into the drainage fund. That portion of each such item which is to be levied on the individual properties in any town or city shall be handled as follows. The appropriate board of assessors shall ascertain from the maps filed and apportionment of cost filed or recorded, the various parcels liable for any part of such item and shall enter in appropriate columns in the annual assessment roll before the delivery thereof to the county legislative body the number of each such parcel, the name of the owner as far as the same can be ascertained by the assessors and the figure to be used in determining the amount to be borne by each parcel, be it area, enhancements, modified enhancements, assessed valuation or percentage, all as shown by the above-mentioned maps or statements. Should a parcel have been subdivided, each division shall be so entered separately and the area, enhancement or other figures shall be subdivided accordingly by the assessors.

5. The county legislative body shall each year, at the time the annual tax levy is made, levy upon each separate parcel so shown on the assessment rolls an amount which shall bear the same relation to the total to be collected as shown by the annual statement as the area, enhancement or similar figure assigned to that parcel bears to the total of all such areas, enhancements or similar figures. Should the board of supervisors discover errors in the work of the assessors, they hereby are specifically empowered to correct the same so that the full amount shown by the annual statement of the department shall be assessed upon the properties liable therefor and it shall be the duty of the assessors to aid the county legislative body in making such corrections.

6. The amount so levied shall be collected and shall be a like lien as general taxes until the amount thereof is paid to the county treasurer, superior in force and effect to all other liens except unpaid general taxes, provided, however, that the collection of such tax shall be enforced only by sale of the land or property assessed. On or before the first day of June in each year the county treasurer shall pay the amount so to be raised in his county, as shown by the annual statement of the department of the previous year, to the Comptroller who shall pay the same into the drainage improvement district fund or into the drainage fund as the case may be. The tax collectors and county treasurers collecting and paying such taxes to the Comptroller shall be governed by and have all the powers specified in the Real Property Tax Law, which formerly were specified in articles 4 and 7 of the Tax Law for the collection of taxes and sale of property by county treasurers for unpaid taxes and redemption of lands.

§ 15-1957. Drainage fund.

1. The Comptroller shall designate a depository or depositories for receiving all moneys provided for the repair or enlargement of the ditches or channels specified in section 15-1945. The fund thus created shall be known as "the drainage fund." Before any such deposit shall be received by any such depository, such depository shall execute and file with the Comptroller a bond in such penal sum, with such sureties and upon such conditions as shall be approved by the Comptroller.

2. The department is hereby authorized and empowered to enlarge and repair such ditches or channels in accordance with the procedure

prescribed by that section and to pay the costs thereof from the drainage fund herein created. All moneys received pursuant to section 15-1945 shall be deposited by the comptroller to the credit of such drainage fund. At the time of any such deposit, the department shall send to the Comptroller an original duplicate of the deposit slip, together with a statement of the amount and by whom paid. The moneys of the drainage fund shall be paid out by the Comptroller on the order of the department or the authorized officer thereof.

3. The drainage fund may also be used to defray the costs of surveys, determination of enhancements, apportionment of costs or similar matters in a district or for maintenance of ditches and minor repairs thereto in a district in lieu of raising the necessary funds pursuant to the Local Finance Law, provided, however, that no such proceeding or project shall cost more than five thousand dollars. Any moneys so advanced from this fund shall be repaid to it by the Comptroller as soon as they are collected and paid to him by the county treasurer.

§ 15-1959. Corrections and revisions of assessments, determinations of drainage enhancements and apportionment of costs.

1. In the event that obvious errors or discrepancies should be discovered in any assessment, determination of drainage enhancements or general or special apportionments of cost, the department may correct the same by filing corrected copies of the statement of such assessment, determination or apportionments and following the procedure specified in title 19 of this article.

2. Should such corrections be made, the county legislative body is empowered to levy additional sums on or to give credit to certain parcels to the end that the amount collected from each parcel shall be what it should have been had an error not been made. The county legislative body is also empowered to apply to the department for an adjustment of assessments among the various parts into which an original parcel may have subdivided.

3. The department shall file and record its findings in such cases as amendments to the original or corrected assessments, and shall give notice to the parties affected, but need hold no hearing thereon unless such hearing be demanded by a party affected within ten days after notice is given.

4. None of the above proceedings shall be held to reopen a determination of enhancements or an apportionment of cost, except as to the particular matter involved. Should the department at any time find that a former assessment, determination or apportionment appears with the lapse of time or in the light of new knowledge and experience to have become inequitable, it may so declare by written order and proceed to review the whole matter by following the full procedure laid down in whichever one of the following sections is appropriate: 15-1919, 15-1925, 15-1937 or 15-1939.

§ 15-1961. Drainage district with federal aid.

1. In the event that any agency of the government of the United States shall be willing to perform, direct or finance any work for the drainage and reclamation of any swamp, bog, pond, meadow or other low or wet lands in the state in such manner that the greater part of the cost of such work shall be paid by such government, the department shall have power to form a drainage improvement district including the lands so to

be drained and improved by following the procedure set forth in sections 15-1963 to 15-1967 inclusive, hereinafter referred to as the federal aid sections, in lieu of the procedure specified in the preceding sections of title 19 of this article.

2. It is the intent of these federal aid sections to facilitate the carrying out of such projects by permitting changes in the normal sequence of doing the various acts specified in the preceding sections, but, except as specifically authorized, not to permit changes in the manner of doing each act or in the conditions on which such act is based.

§ 15-1963. Formation of district with federal aid.

1. The department may proceed of its own motion to form such district and to authorize the proposed work as though petitions therefor had been filed as provided in sections 15-1911 and 15-1913 or 15-1931. It may negotiate with the federal government, investigate the proposed district, study such plans of and reports on the proposed improvement as it may find to be available and shall prepare a written report thereon describing the proposed district, the proposed work, the fixation of the district boundaries, giving estimates of the cost of the various parts of the work which may be a charge against the state or the property owners in the district and including a determination of enhancements and an apportionment of costs of such a project. Such report shall be filed and notice of such filing and of a hearing thereon given as provided in sections 15-0903, 15-1913 and 15-1931.

2. After the final hearing the department shall determine whether it is to the public interest to form the district and to proceed with the work and, in general terms, what lands will be benefited thereby. These matters shall be embodied in a written order, which shall, if the action is favorable, form the district, authorize entry into agreements with agencies of the federal government and the doing of whatever is needful to carry out the project, all as elsewhere specified in title 19 of this article. Certified copies of the determination and order shall be filed and notice of such filing given. Thereupon such determination may be reviewed as provided by section 15-0905, except that the proceedings for such review must be initiated not later than ten days after such filings; otherwise such determination shall be considered final and conclusive and in due course it shall be recorded. The district shall be held to have been formed on the date of such final order, but such formation shall not be effective until such order shall have been recorded.

§ 15-1965. Construction project.

As soon as the formation of the district becomes effective, the department shall have full power to enter into agreements with the proper officials of the federal government or of other agencies of the state, to acquire or appropriate lands and rights in lands, including sites for camps and appurtenant facilities, access roads, borrow pits, quarries, spoil banks and all other necessary and proper matters, to incur contractual obligations, to purchase supplies and materials, to employ the necessary personnel and generally to do whatever is necessary to carry out the proposed project or projects.

§ 15-1967. Changes in project.

After such district is formed and the original federal project authorized, major changes in such project, additional federal projects or changes in district boundaries necessitated by such federal projects may be authorized or made by following the pertinent portions of the procedure in sections 15-1963 and 15-1965.

§ 15-1969. Continuation of district.

Except for such projects as may be carried out by the federal government, any district formed under the provisions of section 15-1963 shall thereafter continue as a drainage improvement district, as though formed under the provisions of section 15-1915.

§ 15-1971. Transfer of property and discontinuance of district.

Whenever a drainage improvement district created pursuant to this article and lying wholly within a county small watershed protection district established pursuant to article 5-D of the County Law has no outstanding debts, liabilities and obligations, the department as the governing body of such drainage improvement district, if it determines after public hearing that the public interest would be served thereby, is hereby authorized to convey, upon such terms and conditions and for such consideration as it may deem adequate, if any, all or any part of the real estate or an easement or easements therein, or other property of such drainage improvement district to such county small watershed protection district. Whenever all of the real property and other property is conveyed as authorized herein, such drainage improvement district and the drainage improvement association within such district shall immediately cease to exist, and any and all functions, powers and duties previously possessed, performed and exercised by either of them shall be terminated.

§ 15-1973. Drainage section association; definitions.

The following words and phrases, unless otherwise specified, are defined as follows:

1. A "drainage section" shall mean an area, of drainable acreage, as described in articles of association which have been filed and recorded as authorized by section 15-1975.

2. "Drainable acreage" shall mean that part of an owner's swamp, bog, pond, meadow or other low or wet agricultural lands, which will be drained by a drainage system as authorized by this title 19 to increase its productivity or otherwise render it more available for agricultural purposes, or in order to benefit the public health, safety and welfare.

3. "Aggregate drainable acreage" shall mean the total drainable acreage owned by all owners who execute articles of association authorized by this title 19.

4. "Owner" shall mean a person other than a municipal or public corporation, who or which is the owner in fee of drainable acreage and who or which executes the articles of association.

§ 15-1975. Drainage section association; creation.

Three or more owners of drainable acreage may form a drainage section association by executing and recording articles of association as

hereinafter provided.

§ 15-1977. Articles of association; recording and filing.

1. The articles of association shall be signed by all owners as listed therein and shall be acknowledged in the form now or hereafter required for the recording of a deed of real property. If there be more than one owner of a separate parcel of drainable acreage, the articles of association shall be signed and acknowledged by each owner thereof. The articles of association shall set forth:

a. The name and address of each owner.

b. The name of the proposed association, such as the.....Drainage Section Association.

c. The designation of two of the owners to act as temporary president and temporary secretary until the first annual meeting of the association.

d. The location and amount of drainable acreage as determined and owned by each owner and a brief description of the parcel or parcels if there be more than one, of drainable acreage owned by each.

e. The facts showing the necessity for the proposed drainage.

f. A description of the proposed drainage works which as far as practicable may include bearings and distances locating the proposed alignment of drains, profiles, proposed new drains and a typical section.

g. The names and addresses, so far as can be ascertained, of persons who are not parties to the articles of association regarding whose lands it will be necessary to obtain a right, pursuant to section 15-1983, to construct, maintain and keep in repair drainage works in order to effectuate the drainage proposed by the articles of association.

h. A map, attached to the articles of association, which generally shall show the drainable acreage of each owner and the lands of others on which it will be necessary to construct, maintain and keep in repair such drainage works referred to in paragraph g of this subdivision. The map shall show generally also the type and location of the proposed drainage works.

i. A mutual agreement by the owners to proceed with the project, to construct it, to maintain it and keep it clean and in repair; to pay all costs and expenses, including legal, engineering, filing and recording fees, all debts of the association and any damages which may be assessed for the acquisition of a right or easement to construct or maintain drainage works upon the lands of a person not a party to the articles of association. Such costs, expenses, fees, debts and damages shall be assessed against each owner in the proportion the drainable acreage owned by him bears to the aggregate drained acreage, or in some other proportion mutually agreed upon and specified in the articles of association. The agreement shall further provide that if any such apportionment is not paid within the time prescribed by the by-laws, the association may institute an action in its own name to recover the same.

j. The articles of association shall provide that they, and the agreement set forth therein, shall be binding upon the heirs, devisees, assignees and grantees of each owner and shall constitute covenants running with the land of each.

2. The articles of association shall be filed and recorded in the office of the county clerk of the county or counties in which the drainage section is located, with a notice appended thereto to the county clerk or clerks to enter the same in the index of grantors of

real property under the names of all signers of the articles of association and the name of the association. The names of all such signers shall be alphabetically and legibly listed in such notice. A certified copy of the articles of association, as so filed and recorded, forthwith shall be filed in the office of the department.

§ 15-1979. First annual meeting; members; officers; by-laws.

1. Upon filing and recording, the articles of association shall be deemed to be in effect and the drainage section association created thereby shall have the power and authority and shall assume the liabilities conferred and imposed by title 19 of this article. The temporary secretary shall notify all members by mail of the time, not more than ten days after such filing and recording, and of the place of the first annual meeting of the association, at which time permanent officers shall be elected for the coming year.

2. The original membership of the association shall consist of the signers of the articles of association. Membership shall cease when a member dies or when he divests himself of the entire drainable acreage owned by him. Grantees, devisees and heirs of the fee of a member's entire drainable acreage shall be members and entitled to all the rights of membership, and they shall be bound by the articles of association. Grantees, devisees and heirs of the fee of a part of a member's drainable acreage shall be members, shall be entitled to all the rights of membership, shall be bound by the articles of association and shall be liable in the proportion that such granted, devised or inherited part bears to the total of the drainable acreage of the member from whom they have taken title.

3. The officers of the association shall be members thereof and shall consist of a president, vice-president, and secretary-treasurer. If an officer's membership in the association shall terminate, the association shall call a special meeting to elect his successor for the remainder of the term for which he was elected. The term of office of all officers shall be one year.

4. The association shall adopt at the first annual meeting by-laws, not inconsistent with law or with the articles of association. The by-laws shall fix the time and place of future annual meetings and regular meetings of the association and shall provide for the calling and holding of special meetings; shall provide the number of members, not less than one-third, to constitute a quorum at its meetings; shall provide the method of conduct of elections of its officers at annual meetings; shall provide the form of notice, in writing, to be given to all members of the amount of assessment due to pay the debts of the association, and to pay all costs, expenses, fees and damages as provided in the articles of association; and may provide for the imposition and collection of annual dues and for any other matter necessary to carry out the conduct of the affairs of the association.

§ 15-1981. Powers of association; limitations; voluntary dissolution.

1. The association shall have:

- a. Power to construct, maintain and keep in repair the drainage project described in the articles of association;
- b. Power to sue and be sued and to enter into contracts to carry out its purposes;

c. Power to make application, pursuant to section 15-1983, to acquire the right to construct, maintain and keep in repair, on the lands of others, that part of the drainage project as so described in the articles of association; and

d. No power to issue bonds or other evidences of indebtedness.

2. All actions of the association shall be taken by a majority vote, except as hereinafter provided, of those members present at a duly called meeting at which a quorum is present. Each member shall have but one vote regardless of the number of parcels of drainable acreage owned by him and included within the drainage section. If there be more than one owner of a parcel or parcels of drainable acreage, such owners shall be entitled collectively to but one vote.

3. No drainage section association shall be formed in an area within a presently existing drainage improvement district. The formation of such an association shall not prevent the inclusion of the aggregate drained acreage within a drainage improvement district hereafter created, in which event the association shall be deemed to be dissolved, except for the purpose of meeting and paying its existing liabilities for debts, costs, expenses and fees.

4. A voluntary petition to dissolve the association may be made to the Supreme Court upon petition of the president of the association when authorized to do so by the affirmative votes of three-fourths of the members present at a special meeting called for that sole purpose and at which a quorum is present. Ten days' notice, in writing of the time and place of the presentation of such a petition shall be given to all members and to non-members, if any, upon whose lands drainage works shall have been constructed in accordance with the articles of association. Public notice of the presentation of the petition shall also be given by a notice stating the time and place of such presentation, published once in two consecutive weeks prior to such time in a paper published in the county in which the articles of association have been recorded. The court, after hearing all interested persons, may grant an order dissolving the association, upon such terms and conditions as in its discretion are merited. The court shall not grant such order in the absence of proof that the association has no outstanding indebtedness. An order dissolving the association shall be recorded in the office of the county clerk in which the articles of association have been recorded and shall direct the county clerk to index it under the name of the association in the index of grantors of real property.

§ 15-1983. Drainage of agricultural lands; procedure.

1. Any person or persons owning any swamp, bog, pond, meadow or other low or wet agricultural lands within this state, or a drainage section association organized pursuant to sections 15-1973 to 15-1981, who or which shall desire to drain the same in order to increase their productivity or otherwise render them more available for agricultural purposes and who shall deem it necessary, in order thereto, that a drain or drains, ditch or ditches, dike or dikes, seepage basin or basins for the free passage or disposal of water should be constructed, reconstructed, enlarged, cleaned or maintained on lands belonging to others, may acquire an easement or right to effect such purpose pursuant to the provisions of the eminent domain procedure law, or in lieu thereof, may present a petition duly verified to the department setting forth the following facts:

- a. The name and residence of the petitioner or petitioners.
  - b. A map or description showing the approximate location and area of the property which is to be drained.
  - c. A map or description which will show the location of such drain, ditches, dikes and basins and the area of the lands and properties to be occupied thereby.
  - d. The names and places of residence of the owners of the property to be so occupied; if an infant, the name and place of residence of the person with whom he resides; if a person adjudged incompetent by reason of mental illness or other cause, the name and place of residence of his committee or trustee, if he has one, otherwise, the name and place of residence of the person with whom he resides; if a conservatee, the name and place of residence of his conservator, if he has one, otherwise the name and place of residence of the person with whom he resides; if a non-resident, having an agent or attorney residing in the state, authorized to contract for the sale of the property, the name and place of residence of such agent or attorney. If the name or place of residence of any owner cannot after diligent inquiry be ascertained, it may be so stated with a specific statement of the extent of the inquiry which has been made.
  - e. A statement that the petitioner has been unable to agree with the owner or owners of the property for the damages to be paid for such occupation.
  - f. A statement that it is the intention of the petitioner, in good faith, to complete such drains, ditches, dikes and basins, for which purpose the property is so occupied.
  - g. A request that the department determine the necessity for such drainage and for occupying such lands and property and ascertain the compensation to be made to the owner or owners and that the petitioner be permitted, upon making such compensation, to construct, reconstruct, enlarge or clean such watercourses or drains, ditches, dikes and basins, and maintain the same across the lands specified.
2. In addition, the petition shall be accompanied by an undertaking, satisfactory to the department as to amount and sureties, that applicants will pay the expenses of the proceedings and determination as hereinafter provided.
  3. A person who seeks to acquire an easement or right, to effect the purpose set forth in subdivision above, pursuant to the provisions of the eminent domain procedure law, and who is unable to provide a specific description of the property to be acquired and its location by metes and bounds, with reasonable certainty, may prior to the presentation of a petition to a special term of the Supreme Court, apply for an order permitting such person to enter upon the property sought to be acquired, for the purpose of viewing, surveying, measuring and otherwise examining such property, in order to describe such property in the petition. Application for such an order shall be made to a special term of the Supreme Court, held in the judicial district in which the property is located. The court shall if the facts so warrant, grant the application upon such terms and conditions as it may deem advisable. The court may also require the applicant to post bond to indemnify the owner of the property for any damage caused in the making of the survey.
  4. Upon receipt of such petition, the department shall take such steps as it shall deem proper to ascertain if the relief sought can be accomplished in the manner described in such petition and other facts pertinent to the case and to this end may make such surveys or other investigations as may be in its judgment necessary in the premises.
  5. Notice of a hearing shall be given as follows:

a. The department shall appoint a time and place when and where it will hold a hearing for the purpose of determining the necessity for such drainage and for occupying such lands and properties and assess the damages and benefits resulting therefrom. The department shall deliver to the petitioner copies of the petition, to which shall be attached a notice of the time and place appointed for a hearing, addressed to the owner of each parcel to be occupied.

b. The petitioner upon receipt of such copies and notice shall, on the same day, or the next day thereafter, excluding Sundays and holidays, cause such copy and notice to be served upon the persons to whom it is addressed. A copy of such notice and petition shall be served on the owner of each parcel or to any one of several owners of a parcel in case there be more than one. In case the owner is an infant such copy and notice shall be served upon his general guardian, if he has one; if not, on the person with whom he resides. If a person adjudged incompetent by reason of age, drunkenness, mental illness or other cause, service shall be made upon his committee or trustee, if he has one; if not, on the person with whom he resides. If a non-resident, having an agent or attorney residing in this state, authorized to contract for the sale of the real property described in the petition, service upon such agent or attorney will be sufficient service upon the owner.

c. Depositing a copy and notice in the post office properly inclosed in an envelope addressed to the owner, guardian, committee, trustee, agent or attorney, respectively, at his post office address, and paying the postage thereon shall be deemed proper service. Notice of such hearing may be given by publishing the same once a week for two successive weeks, immediately prior thereto in two newspapers in the county or counties in which the lands and properties affected are located, provided personal service cannot be made. Such service shall be made at least fifteen days prior to the date of the hearing.

6. Assessment of damages shall be as follows:

a. The department shall view the premises affected and at the time and place appointed shall hear all parties interested and such witnesses as they may produce. Such hearing may be adjourned at the discretion of the department.

b. At the close of such hearing, if the department shall determine that the occupying of the lands and properties specified is necessary for the drainage of the lands of the petitioner, it shall assess the damages to the person or persons owning the same and fix the compensation to be made therefor. In fixing the amount of compensation for lands or property to be taken, the department shall make such allowance or deduction on account of any benefits which the owners may derive from the proposed work as the department shall determine to be just and equitable in the premises.

c. A copy of such determination, duly certified by the department, shall be filed by the department in the clerk's office of the county or counties in which such lands and properties are located. A copy of such determination shall be served by the department by mail on each petitioner and on each owner of each parcel or on any one of several owners of a parcel in case there be more than one, together with a notice of the date and place of filing such certified copy in the county clerk's office.

7. Review shall be as follows:

a. If the petitioner or petitioners feel aggrieved by the decision of the department, he or they may review the same as provided in section 15-0905. Unless such proceeding for review shall have been instituted within sixty days after filing of the decision in the county clerk's

office, the decision of the department shall be deemed final. If the final decision shall be adverse to the applicant, no other application to the department for the construction of the same works shall be made within one year.

b. If the owner or owners of the property to be occupied feel aggrieved by the decision of the department only to the extent that it determines the necessity for the occupation of the lands and properties of such owner or owners, he or they may review the same as provided for in section 15-0905. Unless such proceeding for review shall have been instituted within sixty days after the filing of the decision in the county clerk's office, the decision of the department shall be deemed final. If such owner or owners feel aggrieved by the assessment of damages made by the decision of the department he or they may apply, pursuant to the applicable provisions of the eminent domain procedure law to ascertain the compensation to be made to the owner or owners for the property to be taken. Upon the granting of such an order the proceeding shall continue for the ascertainment of compensation as provided by the eminent domain procedure law as if acquisition proceedings had been instituted by the petitioners in the first instance. Such an application shall save to such owner or owners the right to review the determination of necessity for the drainage works made by the department on any appeal taken to the Appellate Division by petitioners or owners pursuant to the provisions of the eminent domain procedure law.

8. If after the expiration of sixty days proceedings have not been instituted to review the decision of the department as provided in subdivision 7 above, the petitioner or petitioners shall pay the damages assessed by the department and may thereafter enter upon such lands or properties for the purpose of constructing, reconstructing, enlarging, cleaning or maintaining such drains, ditches, dikes and basins. Deposit of the money to the credit of the owner or owners, pursuant to the direction of the department, shall be deemed a payment within the provisions of this section.