

# Environmental Conservation

## ARTICLE 15 WATER RESOURCES

### TITLE 21 RIVER REGULATION BY STORAGE RESERVOIRS

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§ 15-2101. Definitions and construction.

The following words and phrases when used in title 21 are defined as follows:

1. "Real estate," when used without words of limitation, includes all uplands, lands under water, the waters of any lake, pond or stream, all water and riparian rights or privileges, all water powers, water plants, and all dams, races, sluiceways and machinery connected therewith, and any and all easements and incorporeal hereditaments, and every estate, interest and right, legal or equitable, in land or water, including terms for years, and liens, legal or equitable, on real estate, as above defined, in way of judgment, mortgage or otherwise, and all real estate as above defined acquired or used for railroad, highway, or other public purposes.

2. "Regulating reservoir" means a basin for impounding water, formed or enlarged by a dam, constructed or maintained for the purpose of regulating the flow of a stream or river and shall be construed to include the dams and dikes or other structures by means of which the

water is or is to be impounded, the gate houses, including controlling gates, sluices, screens, racks and other accessories thereto; spillways, fishways, log or ice chutes, or barriers and all accessories thereto; all bridges or roadways over or appurtenant to the dams and dikes; all other structures, devices, or appliances connected with or appurtenant to any of the structures hereinbefore enumerated, in such manner that they cannot be removed without injury to such structures or without impairing the usefulness thereof for the purposes for which they are intended; the lands under the water impounded, or to be impounded, by the dam or dams, and such lands surrounding or adjacent to the dam, or the water impounded or to be impounded thereby, and such other real estate and appliances, including roadways and telephone lines, as shall be necessary for the purposes of the construction, maintenance, or operation of a regulating reservoir, as above defined, also including such land surrounding such reservoir as may be necessary to preserve and protect such reservoir from unsanitary conditions, and from any encroachment affecting its use for the purpose of regulating the flow of the stream or river for the regulation of which it may be constructed. Such term is not intended to include a reservoir created by a dam constructed or maintained for power purposes, but is intended to include a reservoir at or by reason of which there may be, as an incident to the construction, maintenance and operation of such regulating reservoir, the possibility of the utilization of a portion of the water stored thereby for power purposes, without in any way interfering with the primary purpose of a reservoir constructed under the provisions of title 21 of this article.

3. "Benefit or benefits" shall be interpreted to include benefits to real estate, public or private, to municipal water supply, to navigation, to agriculture and to industrial and general welfare by reason of the maintenance and operation of a regulating reservoir, whether such benefit shall inure to a person, a public corporation or the state. In the event that any regulating reservoir operates to relieve the state of any obligation by reason of diversion of the water of any river for canal purposes, the state, to the extent that the maintenance and operation of such reservoir may accomplish such relief, shall be deemed to have received benefit therefrom.

4. "Board" shall mean the river regulating board of a district.

5. "Preliminary expenses" shall be construed to mean expenditures made or incurred by the state on account of the services or expenses of its officers or employees in making studies, investigations, surveys, plans, specifications and estimates; in negotiating, drafting, and letting contracts; in supervising and directing the construction of works and structures, as authorized or required by title 21 of this article; and the expenses of procuring searches, or abstracts of title of real estate for the purpose of carrying out the provisions of title 21 of this article.

6. "Regulation" means only such regulation as can be had through the construction, maintenance and operation of regulating reservoirs, excepting as otherwise expressly provided in title 21 of this article.

7. "Average flow" means that result in terms of cubic feet of water per second derived by the division of the total number of cubic feet of water flowed by any stream or river, at the location thereon where the measurement is taken, in one year, or for an average of years, by the number of seconds in a year.

8. "Average normal flow" means that result in terms of cubic feet of water per second derived by the division of the total number of cubic feet of water flowed by any stream or river, at the location thereon

where the measurement thereof is taken, on those days in a year during which such flow did not exceed the average flow, by the number of seconds in the total number of such days.

9. "Cost of construction" shall be construed to include in addition to the cost of a regulating reservoir, all preliminary expenses, all expenses of organization of the district, engineering fees, costs of surveys, plans, advertising, salaries, compensation and expenses of the board, together with all legal and other expenses, incidental to the construction of such reservoirs up to time of the completion thereof.

10. "Cost of maintenance and operation" shall be construed to include all such expenses for repairs and upkeep of the regulating reservoir, all such expenses necessary to the proper operation of such reservoir for the purposes for which it was constructed and all such part of the compensation and expenses of the board, its officers and employees after the completion of such regulating reservoir as are in the judgment of the board and the department properly chargeable thereto.

11. "High flow line" means the line which will be made around a reservoir by the water therein when it is at the level of the crest of the reservoir spillway.

12. "Low flow line" means the line made by the water of a reservoir when it is at the lowest level which, consistent with the regulation of the flow of the river and the maintenance of sanitary conditions, the board with the approval of the department shall fix and determine.

13. "Unsanitary condition or conditions" means such condition or conditions as are a menace to the public health.

14. The general provisions and definitions appearing in section 15-1903 shall, where appropriate, be applicable to the functions and duties of the department or board, as the case may be, under title 21.

#### § 15-2103. Creation of river regulating districts.

1. Bodies corporate, which shall consist of and be known as river regulating districts, may be created pursuant to title 21 of this article to construct, maintain and operate reservoirs within such districts, subject to the provisions of this article for the purpose of regulating the flow of streams, when required by the public welfare, including public health and safety. Such river regulating districts are declared to be public corporations and shall have perpetual existence and the power to acquire, and hold such real estate and other property as may be necessary, to sue and 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 authorized by and subject to the provisions of this article. Such powers shall be exercised by and in the name of the board of the district.

1-a. Notwithstanding any other provision of law, for purposes of applying for and/or receiving any federal moneys or deriving any type of benefit or advantage pursuant to federal law, rule or regulation river regulating districts are hereby deemed to be municipal corporations within the meaning of subdivision two of section sixty-six of the general construction law.

2. Petitions may be filed as follows:

a. Any person or public corporation may present to the department a petition for the organization of a river regulating district pursuant to the provisions of title 21 of this article. Any such petitioner shall be a resident or owner of real estate within the proposed district, or if a public corporation, one whose boundaries lie wholly or partly within

such district.

b. The petition shall set forth:

(1) The proposed name of the district, as the ..... River Regulating District.

(2) The necessity for the organization of such district, the purposes to be accomplished thereby and the benefits to inure from the exercise of its powers.

(3) A general description of the territory included in the proposed district. Such description need not be given by metes and bounds, or by political subdivisions, but it shall be sufficient to state that the territory to be included in the proposed district constitutes the watershed of the particular river in reference to which the petition is filed stating generally the extent of such watershed. In the event that the district sought to be organized does not include the whole watershed of the particular river, but only the watershed of a tributary of the river, then, the petition should generally set forth the extent of such watershed, the reason why the watershed of the tributary should be organized as a separate river regulating district, and the relation of the regulation of the flow of such tributary to and effect upon the flow of the river to which it is tributary.

(4) The extent of the regulation possible through the construction and operation of reservoirs.

(5) Whether state or private lands, or both, will be required, and in general the extent thereof, and all such facts as would show or tend to show the public necessity for the regulation of the flow of the river.

3. Hearings shall be held as follows:

a. Immediately upon the receipt of such petition, the department shall cause notice by publication pursuant to subdivision one of section 15-1903 to be given of the pendency of the petition, and of the time and place of a hearing thereon, and may appoint times and places for further hearings if deemed by it to be desirable.

b. Hearings shall be conducted in accordance with the procedure set forth in section 15-1903 of this article. If after such a hearing or hearings, it should appear that the purposes of title 21 of this article would be best served by the creation of the river regulating district sought in the petition, the department shall thereupon so decide and declare. It shall then prepare and file a map of such district with a certificate of its determination creating such district and showing the name, extent and purpose of the district, with the Secretary of State and the county clerk of each county wholly or partly within the district, and notice of such decision shall be given in the manner set forth in section 15-0903.

4. Review is available according to the following provisions:

a. The decision of the department may be reviewed in accordance with the provisions of section 15-0905. Upon failure so to review within the time prescribed or if the action of the department is sustained or modified on such review, the district shall thereupon become a river regulating district of the State of New York and a public corporation with all the rights and powers granted by title 21 of this article. No such review shall be had excepting at the instance of the Attorney General of the state unless prior to the application for the review the party making application shall file a bond or undertaking in a sum to be fixed by the Supreme Court or a justice thereof with good and sufficient sureties to be approved by the court or a justice thereof agreeing to pay all costs and expenses caused by such review as determined by the court in the proceeding in the event of failure to set aside or modify the determination and order of the department creating such district.

b. After such a river regulating district shall have been created as a public corporation hereunder, the certificate creating the same shall be final and binding upon all the public corporations and real estate within the district, and shall finally and conclusively establish the regular creation and organization of such district.

c. The organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly provided.

5. Copies of the certificate certified by the department shall be recorded in the office of the Secretary of the State and in the office of the county clerk of each county partly or wholly within the district and in the event of a review any order or judgment of the court thereupon shall be likewise recorded. The county clerks and the Secretary of the State shall receive for filing and recording such copies and all papers to be filed and recorded by them under the provisions of title 21 of this article. They shall also receive such fees as are, or hereafter may be, provided by law for like services in similar cases and all above mentioned fees shall be a part of the preliminary expenses.

§ 15-2105. Organization of the boards of river regulating districts.

1. Within thirty days after the incorporation of a river regulating district as hereinbefore provided, the Governor shall appoint three persons, two at least of whom shall be resident freeholders within the district, as a board to be known as the Board of ..... River Regulating District; one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, appointments shall be made for terms of five years. The Governor shall fill any vacancy on the board within thirty days after it occurs.

2. The members of the board including the chairperson shall not receive a salary or other compensation but shall receive all necessary expenses incurred in the performance of their duties. Expenses for any member shall be approved by the board before being paid.

3. Each member of such board, before entering upon his duties, shall take and subscribe the constitutional oath of office, which oath shall be filed in the office of the Secretary of State. Upon taking the oath, the board shall choose one of its number president, and shall select some suitable person or persons to act as secretary and treasurer, who may or may not be a member of the board. It shall adopt a seal and shall keep in well bound books a record of all its meetings and proceedings, certificates, contracts, surety bonds, and corporate acts, which shall be open to the inspection of the department, the members thereof and all owners of real estate in the district and all other interested parties.

4. A majority of such board shall constitute a quorum, and a concurrence of a majority in any matter shall be sufficient, for its determination, except as otherwise provided by the Local Finance Law.

5. The secretary shall keep and be the custodian of the records of the board, and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. He shall attest under the corporate seal of the district all certified copies of the office records and files of the district that may be required of him by the provisions of title 21 of this article or by any person ordering the same and paying the reasonable cost of transcription. Any portion of the records so certified and attested shall prima facie import verity.

The secretary shall also serve as treasurer of the district unless a separate treasurer is selected by the board.

6. The board may employ such attorneys, engineers, agents, assistants and employees as may be needful, and fix their compensation, including the compensation of its secretary and treasurer.

7. The Governor may remove a member of such board for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten day's notice. If such member shall be removed the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and his findings thereon, together with a complete record of the proceedings.

§ 15-2107. General duties.

1. Upon its organization the board may prepare a plan for the regulation of the flow of the river or rivers in its district. Such plan shall show the available and feasible reservoir sites on such river or rivers, whether any reservoir now existing can be and should be enlarged and to what extent, the approximate number of acres of land flowed or to be flowed by each reservoir, whether any of such land is owned by the state and if any, how many acres, the number of acres of private land required, together with the estimated value of the land, and how many acres, if any, of such land are lands of the state within the forest preserve. Such acreage shall include such quantity of land surrounding the reservoir to be created or enlarged as would in the judgment of the board be required for the protection, maintenance and operation of such reservoir. The plan shall be accompanied by such maps, profiles and other data and descriptions as may be necessary to set forth properly the location and character of the work and of the property to be taken or damaged, and by estimates of cost of each such reservoir. In case maps, plans and specifications for any such reservoir at or near the site thereof, are on file in the office of the department, and in case any records in any other department of the state government would be an aid in the preparation of such plans, these shall be available to the board for such purpose.

2. Upon the completion of such plan if the board approves of such plan it shall certify it to the department for its approval, and the department within forty days thereafter may approve the same, or modify it and approve it as so modified. As so approved by the department it shall be known as the "official plan" for the regulation of the flow of the river or rivers of the district. Copies thereof shall be filed in the offices of the board, the department, and of the county clerk of each county wholly or partly within the district. Such plan in like manner may be altered from time to time provided such alteration shall not affect any assessment already made.

§ 15-2109. General powers.

1. The board shall have power to make all necessary rules and regulations which shall be effective when approved by the department.

2. 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 any purpose authorized by title 21 of this article, being liable only for actual damage done.

3. The board on behalf of such district shall have and may exercise all of the powers enumerated in subdivision 1 of section 15-2103 and in addition thereto all such other powers as are necessary and proper to carry into execution the powers expressly granted to it, including power to make such channel improvements as may be necessary to prevent damage to downstream properties by the waters released from reservoirs. The board shall have charge of the operation of all reservoirs now in existence, or hereafter constructed for the regulation of the flow of the river and its tributaries of the district which it represents, not including, however, any reservoirs which are or may be maintained primarily to provide water for the canal system of the state. No reservoirs for the regulation of the flow of streams or for any other purpose except for municipal water supply shall be hereafter constructed in Hamilton or Herkimer counties on the south branch of the Moose River by any river regulating board.

4. The board shall have the right to establish and maintain stream gauges and rain gauges, and may make such surveys and examinations of rainfall, stream flow and flood conditions, and of other scientific and engineering subjects as may be necessary and proper for the purposes of the district and shall preserve a record thereof.

5. The board, on behalf of such district, subject to the limitations of title 21 of this article, shall have a dominant right of eminent domain over the right of eminent domain of public corporations, except cities. In exercise of this right, due care shall be taken to do no unnecessary damage to other public utilities, and in case of failure to agree upon the mode and terms of interference, not to interfere with their operation and usefulness beyond the actual necessities of the case, due regard being paid to the other public interests involved.

6. The board on behalf of such district shall have power to consent to the transfer of jurisdiction over lands under its jurisdiction to any state department or a bureau, division or agency thereof, or to any state agency, upon such terms and conditions and under such regulations and restrictions as said board shall deem just and proper, providing, however, that the use of such lands will not interfere with the purposes for which they were acquired.

7. The board of the Hudson river-Black river regulating district shall have the power to contract to sell water, upon such terms and conditions as it deems advisable to any or all of the counties of Albany, Columbia, Essex, Fulton, Green, Hamilton, Rensselaer, Saratoga, Schenectady, Warren or Washington, which counties are contained within such district.

#### § 15-2111. Acquisition of real estate.

1. The board on behalf of such district shall, subject to the limitations herein contained, have the right to condemn for the use of the district any real estate which is determined to be necessary for the purpose of carrying out any of the provisions of title 21 of this article. It may acquire title to such real estate by agreement with the owner thereof and upon payment therefor of the amount of compensation to be paid such owner.

2. Lands of the state outside of the forest preserve, not used by canals of the state, may be used for the purposes of title 21 of this article. Not exceeding three per centum of the lands of the state, not owned or hereafter acquired, constituting the forest preserve as now fixed by law, may be used for the construction and maintenance of reservoirs for the purpose of title 21 of this article.

3. If any real estate belonging to any county, city, town, village or school district is required for the purposes of title 21 of this article, the county legislative body for such county, the mayor and common council or governing body for such city, the town board for such town, the village board for such village, the trustees or board of education of any school district for such district, or any persons, body or bodies, having a like power, acting for such public corporation may grant or surrender such real estate for such compensation as may be agreed upon by such official representatives and the board. The compensation agreed upon as thus provided shall be paid to the fiscal officer of the public corporation or the person or persons from whom such real estate is acquired.

4. Title to any such real estate owned by any infant or incompetent person may be acquired on behalf of the board in the same manner as provided by law with respect to the sale, mortgage or lease of real property of such infant or incompetent person upon such terms as the Supreme Court or the County Court of the county in which such real estate is situated may provide, and for such purpose jurisdiction is hereby conferred upon such courts.

5. If the board cannot agree with the owners upon the compensation and damages to be paid for the real estate so taken, it shall thereupon serve upon such owners a notice as hereinafter provided that the real estate described therein has been acquired by the board for the purposes of title 21 of this article, and shall proceed to acquire title thereto under the provisions of the eminent domain procedure law.

6. If any real property, owned by a corporation having by law the power to exercise the right of eminent domain, is taken under the eminent domain procedure law, the board shall have no right to enter upon and take possession of any such real estate until the owner thereof shall have been paid or tendered the amount due under the final order and judgment in such proceedings with interest.

7. If any such payments are made directly by the board, the amount so paid shall be refunded to the board out of the general funds of the district as provided in subdivision 7 of section 15-2119.

8. Title to all real estate acquired pursuant to the provisions of title 21 of this article except where this expressly provides otherwise, shall be taken in the name of the State of New York, and when so taken shall be deemed to be taken for a public use.

9. All real estate acquired or taken pursuant to the provisions of title 21 of this article is hereby dedicated to the use and purposes for which it is so taken, and the right, title and interest acquired by the state therein is so acquired subject to such use and purposes.

§ 15-2113. Discontinuance or relocation, or both, of highways, roads and streets.

1. If the board shall deem it necessary to discontinue a public highway, road or street, or a part thereof, because of its interference with the proper location of a reservoir for which preliminary plans shall have been adopted as provided in title 21 of this article, it may discontinue it; and if the board shall determine that the public interest so requires, it may relocate such highway, road or street, or the part discontinued, along a course wholly or partly within or without the high flow line of such reservoir, and acquire, with funds of the board applicable to the expense of such reservoir, in the manner provided in title 21 of this article for the acquisition of real estate,

the necessary rights of way or easements for such relocated part, or in lieu of such a relocation may establish new highways to connect with then existing highways, roads or streets, to afford a substantial equivalent, for purposes of highway traffic, of such a relocation. The determination of the board to relocate or establish any such highway, road or street, shall be by resolution, setting forth a description of the course of such highway, road or street, a certified copy of which shall be filed in the office of the clerk of each town and village containing any part of the relocated or new highway, road or street. If the highway, or part thereof, so established or relocated shall be a state or county highway, the resolution shall not be effective until approved by the state Commissioner of Transportation and his written approval appended thereto. From the time of the filing of such copy or copies of the resolution, the relocated or connecting highway shall be deemed duly laid out.

2. After having acquired the necessary rights of way or easements therefor, the board, with its funds, shall construct such relocated or connecting highway, road or street, or part thereof. If the highway, or part thereof, which is discontinued, be a state or county highway, or part thereof, the construction of the relocated or connecting highway shall be in accordance with plans approved by the state Commissioner of Transportation. If the highway, or part thereof, which is discontinued, be a county road, or part thereof, the construction of the relocated or connecting highway shall be in accordance with plans approved by the county superintendent of highways. In the case of any other highway, road or street, the board shall construct the same so as to make it conform in kind and quality generally to the discontinued highways, roads and streets.

3. The control and maintenance of the relocated or connecting highway, street or road, after its completion, shall vest in the local authorities of the city, town or village, in which it or any part thereof is situated, and for such purpose it shall be deemed a highway, road or street of the city, town or village, except that if the highway or road which was discontinued, or the part thereof discontinued, was a state or county highway, or county road, the control and maintenance of the relocated or connecting highway or road shall vest in the state or county authorities having charge of the discontinued highway or road, and for such purpose it shall be deemed a state or county highway, or county road, as the case may be.

#### § 15-2115. Taxation of real estate.

Lands owned by the state and acquired pursuant to the provisions of title 21 of this article, exclusive of the improvements erected thereon by the regulating districts, shall be assessed and taxed in the same manner as state lands subject to taxation pursuant to title 2 of article 5 of the Real Property Tax Law, provided, however, that the aggregate assessed valuations of such lands in any town shall not be reduced below the aggregate assessed valuations thereof with the improvements thereon at the time of their acquisition by the regulating districts, and provided further that in case of a general increase in assessments in any town the assessed valuations of the lands and improvements at the time of their acquisition by the regulating districts shall be deemed to have been increased proportionately with the increase of other real property in such tax district. The taxes levied thereon shall be paid by the river regulating district under whose authority the land was

acquired.

§ 15-2117. Cemeteries.

1. Whenever for the purposes of title 21 of this article it shall be necessary to use any portion of any lands or premises now occupied by graves, burial places, cemeteries, or other places of interment of human remains, the board may acquire the same in the same manner as other real estate may be acquired by it. Provided, however, that if lands or premises so occupied and sought to be acquired are not within a cemetery under the actual control and management of a then existing religious or cemetery corporation, and proceedings shall have been instituted by the board for their acquisition under the eminent domain procedure law, the court, if satisfied at any stage of the proceedings, that the public interests will be prejudiced by delay, may, by order, direct that the board may enter immediately on such lands and premises, and, after the provisions of subdivisions 4 through 8 of this section and sections 304 and 404 of the eminent domain procedure law have been complied with, may devote the same to the public use specified in the petition, upon deposit with the court of a sum to be fixed by the court; but no such order shall be made except upon notice of the application therefor served and posted as hereinafter provided.

2. Such notice shall be served as follows: If any of the owners or their places of residence are unknown, notice addressed, generally, to all owners of and persons interested in the lands used for graves, burial places, cemetery purposes or places of interment within a certain lot, tract or parcel of land, to be described with sufficient certainty to identify it, shall be published in the time and manner prescribed by subdivisions 4 through 8 with respect to the notice therein provided for. Owners, if any, whose names and places of residence are known and who reside within the state, shall be served with such notice personally or by leaving the notice at the abode of the owner to be served, with a person of suitable age and discretion residing therein. Owners, if any, whose names and places of residence are known and who reside without the state, shall be served with such notice by mail, the notice to be deposited in a post office in the state, addressed to the owner to be served, and inclosed in a securely sealed postpaid wrapper. The notice also shall be posted conspicuously in ten places in each town in which the lands are located, at least twenty days before the time of making the application. If the notice be published, the time for making the application shall be not less than eight days nor more than sixteen days after the last publication, and in any case personal service, if any, or service by leaving at the owner's abode, shall be made at least eight days, and service by mail, if any, at least thirty days, before the time of making the application. If, in the condemnation proceeding, an attorney has been appointed by the court to represent defendants served with the original notice otherwise than personally, under the eminent domain procedure law, the notice also shall be served on him, at least eight days before the time of making the application.

3. The notice shall specify the relief sought and the time and place of making the application. The papers or proofs submitted to the court on the application shall include due proofs of the service and posting of the notice and proof, by affidavit, that the persons, if any, served personally or by leaving at their abodes or by mail constitute all of the owners of and persons interested in the lands so occupied whose names and places of residence are known, or, if none were so served,

that all of the owners are unknown, and if certain owners were known but not their places of residence, and therefore were not served, personally or by mail, that fact and the names of such owners shall be stated. Such affidavit also shall set forth the extent of the inquiry to ascertain the names and places of residence of the owners. The provisions of the eminent domain procedure law, as to matter subsequent to the deposit of such moneys shall apply hereto, except that the general fund of the district shall be applicable to the payment of any deficiency judgment rendered pursuant to such section.

4. The board having so acquired title, or the right of immediate entry, shall cause to be published in two newspapers in the county where such burial place or places or graves are situated, which shall in its judgment be best calculated to notify the persons or parties interested or entitled to such notice, which notice shall describe the location of such burial place, cemetery or grave in such manner as to sufficiently identify the same. Such publication shall be made once in each week in each of the newspapers for the space of four weeks, and such notice shall also contain a statement to the effect that any person or persons legally entitled to direct as to the disposition of any such remains may remove the same to any other cemetery or burial place within sixty days after the last publication of such notice, if they so elect, but without expense to the board therefor. From and after the period of sixty days from the last date of publication, the board shall advertise in the state paper and a newspaper published in the county or counties in which the cemetery or cemeteries are situated for bids for the removal of such remains by contract, and their proper reinterment as hereinafter provided.

5. All removals and transportation of such human remains shall be done in accordance with the provisions of the Public Health Law and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located or wherein any of such remains may be reinterred. The board may acquire such other lands as it deems necessary within the county or in an adjoining county where such burial place or places or graves are now located for the purpose of properly reintering such removed remains, which lands shall be acquired in the same manner as provided by title 21 of this article for the acquisition of other lands, title to be taken in the name of the particular river regulating district, but lands shall not be acquired within the corporate limits of a village or city except within the bounds of an existing cemetery unless by consent of the board of trustees of the village or common council of the city or other authorities within such village or city occupying similar positions as trustees or aldermen respectively.

6. The lands so acquired shall be suitable and properly fenced or inclosed, and in such manner as to permit of proper ingress and egress thereto before the final completion and payment for such work, and the expense therefor shall be included within the estimate and contract for such removal. All the bodies removed by such contractor, or by order of the board shall, when distinguishable, be incased each in a separate box or coffin, and each monument, headstone, footstone, slab, board or other designation or distinguishing mark shall be properly removed and reset at the grave of each body at the time of such reinterment. Members of the same family shall be interred in contiguous graves.

7. Whenever any person or persons legally entitled to direct as to the disposition of any remains now interred in such cemeteries, burying place or graves shall request the board, in writing, to reinter such remains in any other cemetery or burial plot, within the same county

where such cemetery, burial place or graves sought to be removed are located or in an adjoining county, the board shall cause such remains to be interred where requested within the same county or in an adjoining county, and shall carefully and properly remove such remains to such burial plot and properly reinter the same, but no payment shall be made for a grave or graves or burial plot for such reinterment other than that acquired by the board as hereinbefore provided. Whenever any person or persons legally entitled to direct as to the disposition of any human remains exhumed or to be exhumed from any cemetery, burial place or graves as herein provided, desire to remove the same for reinterment to any burial plot or cemetery not within the same county from which such remains were exhumed or in an adjoining county as herein provided, such person or persons so entitled to designate such other burial place or plot shall be permitted to remove such exhumed remains from such county, subject to the written consent of the board and the provisions of the Public Health Law, and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located, or wherein such human remains may be reinterred, but no portion of the expense of such transportation or burial in another county other than an adjoining county shall be borne by the board. The board shall pay all expenses connected with such removal, out of the general fund of the district in the same manner as other payments are made.

8. Whenever any lands acquired by the board for the purposes of reinterment of human remains as herein provided, and all the remains so interred have been exhumed from a cemetery, burial place or grave belonging to a corporation organized under the Religious Corporations Law, the Membership Corporations Law, the Not-For-Profit Corporation Law, or by special act, or belonging to a town or board of trustees elected pursuant to the provisions of the Town Law, or to a village or city, the board shall by a proper resolution, after completion and acceptance thereof and final payment for all work performed as provided in this section, execute and deliver in the name of the district, and without expense to the grantee therefor, to the trustees or other governing body of such corporation, by whatsoever name or title they may hold office, or to the board of trustees of a town burial ground, or to a duly incorporated cemetery association, and to their successors in office, a quitclaim deed covering the lands so acquired, together with all structures erected thereon; and where such lands were so acquired for the purposes of reinterment of human remains exhumed from a public or private cemetery, burial place or grave which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years and not having a board of trustees pursuant to the provisions of the Town Law, the board shall by proper resolution as provided by title 21 of this article, after completion and acceptance thereof, and final payment for all work as by this section provided, execute and deliver in the name of the board, and without expense to the grantee therefor, a quitclaim deed or other proper release to such town wherein such lands so acquired as provided by this section may be situated, and such cemetery or burial place shall from and after the execution and delivery thereof be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the electors in town meeting, excepting, however, that where such lands so acquired for the purposes set forth in this section are situate within the corporate limits of a village or city, such quitclaim deed or release herein provided for shall be executed and delivered to such village or city and thereafter be and become the property of such village or city and

subject to the laws governing such village or city, and further excepting, however, that the board, subject to the approval of the town board, or city or village authorities herein referred to, shall have the right to convey such lands so acquired, together with all structures erected thereon, to a duly incorporated cemetery association. From and after the date of the execution and delivery by the board, as by this section provided, of the quitclaim deed or release, the board shall be deemed to be divested of all right and title to such lands so quit-claimed or released and shall not thereafter be liable for the care, custody, maintenance and control thereof. This section does not limit any existing rights of burial, or removal of remains under other provisions of law applicable thereto.

§ 15-2119. Procedure for construction of reservoirs.

1. Preliminary plans, specifications, maps, statements and estimates are required as follows:

a. If the board shall determine as a part of the official plan or before the official plan has been prepared that the public interest or welfare requires that a reservoir should be constructed for the regulation of the flow of a river or rivers, stream or streams of the district, it shall cause to be prepared preliminary plans and specifications of such reservoir with estimates of the total cost thereof together with a survey of the lands upon which the same is to be constructed, giving the location thereof, and of all lands to be taken, flowed or damaged, with a description by survey or otherwise, showing the amount of lands belonging to the state and to persons or public corporations and the amount of lands of the state in the forest preserve affected thereby.

b. The board shall also cause a map to be made, showing all such lands, the number of acres in each separate tract, the names of the owners and occupants thereof, so far as the board can ascertain the same. Such maps shall also show the high flow lines of the proposed reservoir.

c. The board shall also prepare a statement of the amount of water power, if any, which consistent with the proper regulation of the flow of the river or stream may be developed at or by reason of such reservoir by the withdrawal of water for power purposes directly therefrom with an estimate of the value thereof. The board shall also prepare a statement showing generally the public corporations and locality of lands to be benefited by the improvement and how and whether the state will be benefited thereby and the public necessity for the improvement.

d. In the event that any of the real estate required for such reservoir shall belong to the state, the value thereof shall be determined in the estimates, as hereinbefore provided, and in the event that such land is outside the forest preserve and the state is chargeable with any proportion of the expenses, such value shall be deducted from the amount to be paid by it, and shall be chargeable as a part of the expenses of the improvement.

e. When the board shall have completed such preliminary plans, maps, specifications, estimates and statements, it shall certify the same with its approval thereof to the department, which shall have power after hearing the board, to modify such maps, plans, specifications, estimates and statements, or any of them, and within forty days after the receipt thereof shall approve the same as certified to or modified by it, and

shall certify the same as approved by it to the board. The board shall thereupon cause the preliminary plans, maps, specifications, estimates and statements so approved to be filed in the office of the county clerk of each county having lands within such district, and in the office of the department.

2. Upon the completion and filing of such preliminary plans, maps, specifications, estimates and statements, as aforesaid, the board shall forthwith give notice of such filing as provided in subdivision 1 of section 15-0903, and shall hold a hearing thereon in the manner set forth in section 15-0903.

3. Upon the completion of such hearing the board shall determine whether the public welfare requires that such proposed improvement should be proceeded with, and what, if any, modification should be made in such plans, maps, specifications, estimates and statements. If the board shall determine that such maps and plans, specifications, estimates and statements should be modified in any respect, it shall certify its proposed modifications to the department, which after hearing, the board shall determine what, if any, modifications should be made therein, and as modified by them shall approve the same and certify the same with their approval to the board, which modified plans, maps, specifications, statements and estimates shall be filed by it as hereinbefore provided for the filing of the original thereof. If the board shall finally determine that the proposed reservoir shall be made, it shall thereupon make a final order directing the same to be made, and shall cause such final order or certified copies thereof to be filed and recorded in the office of the county clerk of each county in which any lands within such district are located, and in the office of the department, and forthwith give notice by publication of the making and filing of such final order.

4. Any person or public corporation affected by the determination of the board may review such final determination in the manner provided by article seventy-eight of the civil practice law and rules. Unless application shall be made for such review within sixty days after the filing of the final order, as herein provided, the plans, maps, specifications, statements and estimates shall be the established and final plans, maps, specifications, statements and estimates of such reservoir. In the event that upon such review there shall be any modification by the court of the final order, maps, plans, specifications, statements and estimates, the court shall direct the modification thereof by order, and the board shall cause such order to be filed and recorded in each place where the final order was filed and recorded. No review of the final determination of the board shall be had unless at the time of the application for review the person or public corporation seeking the review shall give an undertaking approved by the supreme court or a justice thereof, as to form, amount, and sufficiency or sureties that in the event of failure to modify the final determination, he or it will pay to the board all such costs and expenses as are incurred by it on account of the review proceedings, as shall be determined by the court.

5. The board shall have power to make such changes in the final maps, plans and order as the nature of the work may require, provided that the board shall give notice by publication pursuant to subdivision 1 section 15-0903, and shall give a hearing thereon as in the first instance and the same proceedings shall be had as provided by subdivisions 3 and 4 of this section.

6. In the event that in any such plans, estimates and statements, a charge is made against the state for any share of the expenses of the

proposed reservoir, not including therein such preliminary expenses as may have been necessary or expenses consisting only of assessments against the state on account of benefits from the improvement, no such reservoir shall be made under title 21 of this article pursuant to any such final order until the Legislature shall make appropriation to pay the state's share of such expenses. The sum so appropriated shall be paid into the general fund of the river regulating district for which it is appropriated.

7. When any such final order shall have been made, and the Legislature shall have made appropriation for any share of the expense payable by the state, if any, the board shall proceed as herein provided to the acquisition of such real estate as may be necessary for the construction, maintenance and operation of such reservoir. When proceedings are taken under the eminent domain procedure law, the board shall file in the Comptroller's office a certified copy of the final order provided for in the eminent domain procedure law, and a certified copy of the judgment therein rendered pursuant to the eminent domain procedure law, together with the certificate of the Attorney General that no appeal from such final order and judgment has been made, or will be taken by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court. Payments of the amount due upon such final order and judgment with interest from the date of the judgment until thirty days after the entry of such final order and judgment, and payments for real estate taken by agreement, shall be made out of the general fund of the district.

8. Construction work shall be undertaken in accordance with the following provisions:

a. After any such final order shall have been made and filed as hereinbefore provided, the board may proceed to construct the work according to the plans and specifications, by publishing a notice stating the time when and the place where such bids or proposals will be received, once a week for three weeks in one newspaper published in the city of New York and in one newspaper in each county wholly or partly within the district, if such papers there be, and in such other newspapers as the board shall deem advisable.

b. The advertisement 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 and the terms and conditions on which bids will be received and such other matters as may be necessary to carry out the provisions of title 21 of this article. In such notice the board shall reserve the right to reject any or all bids and again advertise for further bids.

c. The proposals received pursuant to such advertisements shall be publicly opened and read at the time and place designated. Every proposal must be accompanied by a deposit in the form of a certified check upon some national or state bank or trust company within the state in good credit and payable to the board for five per cent of the 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 board, such deposit shall be forfeited to the board and paid by it into and become a part of its general fund. In case the contract be made such deposit shall be returned to the contractor.

d. Before entering into any such contract a bond with sufficient sureties to be approved by the board shall be required, conditioned that the contractor will perform all work within the time prescribed in and in accordance with the plans and specifications, and will pay to the state, the regulating district and the board all damages, costs and

expenses suffered or incurred by any or all of them by reason of the neglect or default of such contractor or his employees or any subcontractor or his employees in the performance of such contract or in doing such work thereunder.

e. Such contract may provide for partial payments to be made from time to time upon the certificate of the engineer in charge of the work after due inspection thereof for an amount not exceeding ninety per cent of the contract price for the work actually done as shown by the certificate. Such certificate must state the amount of the work performed and its total value, at the price fixed by such contract, but in all cases not less than ten per cent of the estimate thus certified must be retained until the contract is completed and approved by the engineer in charge of the work and by the department.

f. The board may divide the work into several parts and let separate contracts therefor. If the estimated cost of any part of such work does not exceed ten thousand dollars, the board may by resolution proceed to do such part of such work by its own forces or otherwise. All such contracts before being entered into shall be approved by the department.

g. Subject to the authority of the department to dispose of merchantable timber and salable wood on state land, no reservoir shall be constructed until provision shall have been made by the board for the clearing from the reservoir site of all timber and all timber growth on lands to be flowed, such timber and timber growth to be removed by the board by contract or otherwise, with the approval of the department. The board shall not permit to remain upon a reservoir site above the low flow line of the reservoir any stump higher than twelve inches above the bed of the reservoir adjacent thereto.

h. All merchantable timber and salable wood on state land to be flowed shall be sold by the department in such manner as it shall deem best for the interests of the state, but in no event for a sum less than its fair market value, provided, however, that the department may in its discretion sell any such merchantable timber or salable wood at public auction after due advertisement. The proceeds of any sale or disposition less the expenses thereof and the reasonable cost of inspecting, scaling, lumbering, cutting and piling, if any, incurred by the department, shall be paid into the general fund of the state. The department may designate the trees or kinds of trees to be considered merchantable timber or salable wood.

i. In preparation of the reservoir site the board shall do such work as may be necessary to prevent stagnant pools above the low flow line thereof.

#### § 15-2121. Apportionment of cost.

1. If proceedings to review the final order of the board determining that such proposed reservoir shall be made have not been instituted within sixty days from the date of the filing of the same, or upon the filing of a modification thereof as directed by order of the court, the board shall, as soon thereafter as practicable, prepare an estimate of the total cost of such reservoir, including interest on certificates of indebtedness issued prior to the effective date of the Local Finance Law, or on notes, to the maturity thereof and compensation for real estate and all damages suffered by reason thereof and all expenses necessarily incurred or to be incurred in connection therewith, and make a complete and verified statement thereof.

2. The board shall then apportion such cost, less the amount which may

be chargeable to the state, among the public corporations and parcels of real estate benefited, in proportion to the amount of benefit which will inure to each such public corporation and parcel of real estate by reason of such reservoir. Such apportionment shall be made in writing and shall show the name of each public corporation and a brief description of each parcel of real estate benefited; the name of the owner, or owners, of each such parcel of real estate, so far as can be ascertained; the proportion of such cost less the amount which may be chargeable to the state to be borne by each, expressed in decimals; and the amount to be paid by each such public corporation or the owner or owners of each such parcel of real estate.

3. Such amount shall be determined by multiplying the total cost less the amount which may be chargeable to the state by the decimal representing the proportion thereof to be borne by each public corporation or parcel of real estate.

4. The board, or a majority of the members thereof, before making such apportionment shall view the premises and public corporations benefited. Such apportionment shall be approved by the board and certified to the department for its approval. Upon the approval thereof by the department, the board shall cause a copy thereof to be served upon the chairman or other presiding officer of the county legislative body of each county, the mayor of each city, the supervisor of each town, and the mayor of each village, named in the apportionment, or if service cannot be had upon such chairman, mayor, or supervisor, then upon a member of the county legislative body of the county, an alderman of the city or member of the governing board thereof, a member of the town board of the town, or a trustee of the village, and to be filed in the office of the county clerk of each county in which any public corporation or real property thereby affected is located. After such service and filing of such apportionment and determination, notice shall be given by the board, of publication of a time and place where the board will meet to hear any public corporation or person aggrieved by the same. The affidavit of the person serving or publishing such notice shall be evidence of such service or publication.

5. The board shall meet at the time and place specified and hear all persons and public corporations interested in or aggrieved by such apportionment and may approve of or modify the same. If such apportionment and determination be modified by the board it shall not become effective until approved by the department and a copy thereof served and filed in the same manner as upon the completion of the same in the first instance. Any public corporation or any person deeming it or himself aggrieved may upon notice to the board review the determination of the board in the same manner as a review is had of the determination of a board of assessors in making an assessment. Such apportionments as so modified and as further modified by any final judgment or order made in proceedings to review the same as herein provided shall be final and conclusive.

6. The amount of the total cost and expense of such reservoir and the maintenance and operation thereof including the amount of a reasonable return to the state as herein provided for, which each such public corporation and each such parcel of real estate is to pay and bear shall be based upon the proportion of cost as determined in the apportionment. If the total cost of such reservoir shall exceed the estimate made and apportioned as hereinbefore provided, the amount of such excess cost, less the amount which may be chargeable to the state, shall be apportioned among the public corporations and parcels of real estate benefited, by an additional apportionment to be made in the same manner

and by the same procedure as the original apportionment, and shall be levied, assessed and collected in the manner provided in section 15-2123 hereof. Such apportionment and determination, when finally made, also shall be deemed to fix and determine the apportionment and the basis of apportionment of all subsequent expenses to be incurred in the maintenance and operation of such reservoir, including the amount of a reasonable return to the state, if any, as provided for in title 21 of this article.

7. If powers be developed after such apportionment has been made or if for any other reason any public corporation or any parcel of real estate becomes liable equitably for such subsequent expenses, a subsequent apportionment may be made in the same manner and subject to the same review as the original apportionment. Provided, however, that before any such apportionment of costs or any assessment is made by the board, public corporations or owners of property liable for the same may execute and deliver to the board a consent, executed and acknowledged in like manner as a deed, by which they acknowledge that they are the public corporations and owners of property benefited by the improvement and consent to bear the cost thereof, less any sum previously appropriated by the state therefor, together with charges provided for in section 15-2125 of title 21 of this article, and to have the same assessed against them or their property as in this article provided. Such consent may also provide, as a condition of its acceptance by the board, for the basis on which the assessment for the improvement shall be made upon the parties consenting.

8. The board may accept or reject such consent. If it accepts the same it must be by resolution providing for the levy of the entire assessment upon the public corporations and property of the parties filing such consent, on the basis of benefits received, if any, determined by the terms of the consent, or if no basis of assessment be fixed by the consent, on the basis of the benefits shared by such parties in the manner provided in title 21 of this article. If such consent be accepted by the board, a certified copy thereof shall be filed by the board in the office of the county clerk of each county in which any public corporation or real property affected by the assessment is located. Such a consent, when executed by a public corporation, must be authorized by the governing body thereof.

§ 15-2123. Assessments; how levied and collected.

1. After the apportionment of cost has been made and filed in accordance with the provisions of section 15-2121 hereof, the board shall prepare a statement showing the name of each public corporation and a description of each parcel of real estate benefited by such reservoir and the amount to be borne by each as determined in the apportionment. The board shall also determine and state whether the amounts shall be paid in one sum or in annual installments, in such amounts as the board shall annually determine to be necessary.

2. A copy of such statement duly verified under the seal of the district shall be filed with the clerk of each county, town, village or city affected or containing any real estate which is benefited. The clerk of every such county, city, town or village shall make and deliver to the county legislative body of such county, the common council of such city, the board of trustees of such village, and the assessors of such town, city or village a copy of such statement.

3. The county legislative body of every such county shall levy and

assess upon such county and upon each town specified in such statement the amount of such cost and expense which in such statement is certified to be the proportion thereof which should be borne by such county or such town as a whole, and the common council or other governing body of each city and the board of trustees of every such village shall in like manner levy and assess upon such city and village respectively the amount of such cost and expense which in such statement is certified to be the proportion thereof which should be borne by such city and village respectively. The assessors of each town or city, containing individual real estate upon which a proportion of such cost is assessed, shall enter on a separate page of their assessment roll a statement of the total amount to be paid by such individual real estate, a description of each parcel and of the property rights defined as real estate herein and the amount chargeable thereto, as contained in the statement filed. The county legislative body of each county wherein such property or land is situate shall levy and assess against each such parcel and each such property right defined as real estate herein the amount specified in the statement, and shall by their warrant direct the collection thereof in the same manner and by the same procedure as general taxes are collected; and in case it is determined that the amount is to be paid in annual installments, the county legislative body or the assessors of the city, town or village, as the case may be, shall annually assess the annual installment to be paid by such county, city, town or village or person in the manner provided by this section until the whole amount shall be paid.

4. Upon the assessment of the cost as provided in this section, the amounts apportioned and assessed shall be paid and remain charges against the several public corporations and liens upon the several properties charged therewith, until paid or otherwise removed, superior in force and effect to all other liens except unpaid general taxes. All moneys collected under and by virtue of the provisions of this section shall be paid to the county treasurer of the county benefited or the county in which the town, city, village or real estate is located who shall pay the same on or before the first day of June in each year to the Comptroller of the state, who shall deposit the same in depository banks to the credit of the several funds of such district as herein provided. In event that it has been determined that the cost of the improvement shall be paid in installments, interest for one year at a rate not higher than the rate of interest secured by the obligations to which the assessments are applicable, and not more than sufficient to pay the same, shall be added to the amount of each installment, on the cost of the improvement less the installment or installments previously levied or assessed, and be collected in the manner provided for the collection of the principal of the assessment. In the case of default in payment of assessments or any installment thereof levied as herein provided, the same penalties shall be collected as are provided in the case of failure to pay general taxes within the time prescribed by law, and when collected shall be deemed a part of the assessment.

5. If the assessment, together with the amount appropriated by the state, be insufficient to pay the obligations issued on account of such improvement, the board shall make a new assessment or assessments, as the case may be, to make up the deficiency, and the owner and holder of any obligations issued under title 21 of this article may by appropriate remedy compel the assessment of such deficiency.

6. Notwithstanding the provisions of subdivision four of this section, all moneys required to be collected under and by virtue of the provisions of this section may be paid directly to the river regulating

district responsible for levying the assessment, provided the payment is made prior to the thirty-first day of October of the year in which the assessment is levied. Any direct payments received by the river regulating district shall be forwarded by the district to the state comptroller, who shall deposit the same in depository banks to the credit of the several funds of such district as herein provided. Upon receipt of any such direct payments, the river regulating district board shall notify the appropriate county treasurer to whom such payments would have been made under subdivision four of this section had not direct payment been made to the river regulating district. All moneys required to be collected and not paid directly to the river regulating district by the thirty-first day of October of the year in which the assessment is levied shall be payable to the county treasurer as provided under subdivision four of this section and shall be subject to a service fee of one percent of the total amount assessed which shall be added to the amount to be collected and which shall be in addition to any penalties which may be imposed in the case of failure to pay general taxes within the time prescribed by law and when collected, such penalties shall be deemed a part of the assessment. All service fees collected by county treasurers pursuant to this subdivision shall be retained by the county treasurer and deposited in the general fund of the county, provided the moneys collected under the annual assessment installment are paid to the comptroller of the state within thirty days of their receipt by such county treasurer. Otherwise, the county treasurer shall pay over the entire service fee collected to the comptroller of the state for deposit to the credit of the several funds of the river regulating district in the same manner as moneys collected under the annual installments of the assessments provided for herein.

§ 15-2125. Operation and maintenance charges.

1. The board shall make an estimate of an amount sufficient to pay the expense of the maintenance and operation of the works erected hereunder, including interest on temporary certificates of indebtedness issued prior to the effective date of the Local Finance Law. If lands in the forest preserve have been used, such estimate shall include in addition a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered. A reasonable return to the state upon the value of the rights and property of the state used shall mean six per cent upon the value of the lands flowed, exclusive of merchantable timber and salable wood removed therefrom for which the state shall have been paid as provided by subdivision 8 of section 15-2119 hereof. The value of the services of the state rendered shall be construed to mean the actual cost thereof.

2. Any amount so estimated shall be the estimated amount required for such purposes each year, and when fixed and determined as herein provided shall be the amount thereof for a period of three years. The amount shall be readjustable at the end of any three-year term. The amount less any part thereof to be paid by the state shall be the amount to be annually collected for such purposes, and shall be apportioned upon the public corporations and real estate benefited according to the benefits derived therefrom respectively, and shall be levied, assessed and collected in the same manner as the cost and expenses of the reservoir are herein provided to be levied, assessed and collected.

3. Such estimates and determinations as from time to time fixed and determined by the board may upon application of any party affected

thereby be reviewed in the manner provided by article seventy-eight of the Civil Practice Law and Rules by the Supreme Court of the judicial district in which the reservoir is located. Upon the hearing on such application for review, the court shall take the testimony and other proofs of the parties and may make an order affirming, vacating or modifying any such estimate and determination.

§ 15-2127. Error in names.

No error in the names of the owners of real estate, or in the descriptions thereof, shall invalidate such apportionment or the levying of assessments or taxes based thereon if sufficient description is given to identify such real estate, and the owners thereof.

§ 15-2129. Financing.

1. After the cost of any improvement made or to be made under title 21 of this article has been apportioned among the public corporations and parcels of real estate benefited as herein provided and after such apportionment has been assessed upon such public corporations and parcels of real estate, the board may finance the cost of any such improvement pursuant to the Local Finance Law. Any bonds issued for such purposes shall not be construed in any event as bonds or indebtedness of the state, and the state shall not be obligated to pay the principal or interest therefor. Such bonds shall be lawful investments for trustees and savings banks of the state and for any of the funds of the state which by law may be invested.

2. The board shall annually include in the installment of the assessment to be collected in that year a sum sufficient to provide for the payment of the principal of and interest on obligations issued for such purposes and maturing in that year.

3. The proceeds of the sale of obligations issued for the purposes of title 21 of this article, together with all other revenues of the board from whatever source derived, shall be deposited in such national or state bank or banks or trust company or trust companies at Albany or within the regulating district as are approved by the Comptroller and the board, subject, however, to the provisions of section 165.00 of the Local Finance Law. Before any such deposit is made the Comptroller shall require from any such bank or trust company security for repayment of the same to such board or to the Comptroller upon demand for the money so deposited in the manner provided in section 106 of the State Finance Law. All moneys received by the board under the provisions of title 21 of this article, except from assessments levied to pay the cost of construction, shall constitute a fund to be known as the "general fund" of the district.

4. All moneys received from assessments levied to pay the cost of construction, together with such part of any surplus in the "general fund" as shall be determined by the board over and above the requirements for the construction, maintenance and operation of the reservoir, including the amount raised for a reasonable return to the state, shall constitute a separate fund, to be known as the "debt service fund," the moneys in which shall be applied to the payment of principal of and interest on obligations issued for the purposes of title 21 of this article, except when the total cost of construction is paid without the issuance of obligations, in which case the moneys applicable thereto shall be paid into the "general fund." Any

installment or installments of the assessment which shall become payable before any obligations have been issued, shall be paid by the Comptroller into the "general fund" and applied to the payment of the cost of construction. The Comptroller is authorized and directed to pay from the "debt service fund" the principal of and interest on obligations issued for the purposes of title 21 of this article.

5. All moneys in said "debt service fund" shall be applied by the Comptroller to the payment of the principal of and interest on such obligations, except as aforesaid, and to the purchase of the same in the open market when possible and while awaiting such purchase such excess shall be invested or kept at interest in the same manner as sinking funds of the state of like nature are invested. If any moneys remain in the "debt service fund" after all outstanding obligations have been paid up and redeemed, such moneys shall be paid into the "general fund" and may be used to pay the expenses of maintenance and operation and other expenses.

6. The board may invest and reinvest any moneys of the "general fund" which are not required to be deposited in accordance with the provisions of section 165.00 of the Local Finance Law. Any such investment shall be made only in obligations of the federal government and the State of New York, and in certificates of deposit of banks or trust companies or in bank or trust accounts of banks in this state, secured by obligations of the United States of America or of the state of New York of a market value equal at all times to the amount of the deposit and with the approval of the Comptroller. The board may sell and dispose of any securities purchased for investment pursuant to this paragraph at any time with the consent of the Comptroller, and the proceeds thereof shall be paid to the Comptroller and deposited in the "general fund."

7. Any obligations purchased for investment pursuant to this section shall be delivered by the seller to the Comptroller who shall be the custodian thereof until the same are sold or otherwise disposed of. The Comptroller also shall collect the income of such investments and deposit such income in the "general fund." Except that certificates of deposit purchased for the Black river regulating district shall be retained in the office of the said Black river regulating district at Watertown, New York and a statement shall be filed with the Comptroller listing such certificate or certificates, the amount thereof, the interest due and payable thereon, the maturity date thereof, the issuer of such certificate and such other information as shall be required by the Comptroller.

8. All payments from the "general fund" of the district shall be made by requisition of the board signed by the board or by the officer or officers thereof authorized by it so to do and audited and countersigned by the Comptroller.

9. The board shall keep in suitable books a complete record of its financial transactions, and the books shall be audited from time to time by the Comptroller.

#### § 15-2131. Reports.

1. The board of any river regulating district created hereunder shall annually, as of such date as the department may provide, submit to it a written report, which shall contain:

- a. An exhibit of the personnel of the board, and all of the employees and persons connected with the board;
- b. A financial statement, showing fully and clearly the finances of

the district, the amounts and dates of maturity of all bonds, notes and certificates of indebtedness, the amounts of money received, and from what sources, and amounts of money paid and purposes for which same were paid;

c. A statement of any petitions received by the board and the action taken thereon;

d. A descriptive statement of the work done during the previous year; and

e. A statement of the condition of reservoirs and the results secured by the operation thereof in each case.

2. In addition to the matters outlined above the board shall report to the department such other matters as it shall deem proper or the department shall require.

#### § 15-2133. Operation of reservoirs.

1. The board shall not permit the water in any reservoir constructed under the provisions of title 21 of this article to rise above the high flow line thereof, except during floods or other emergencies, and if during floods or other emergencies the water shall rise above such high flow line the board shall immediately open the outlet gates in such reservoir and take such other action as may be necessary to lower the water to the high flow line of such reservoir with the least practicable delay. The board shall keep an accurate and, so far as practicable, continuous record of the height of water in each reservoir and shall install and maintain at suitable places such gauges or instruments as may be necessary therefor.

2. Except for absolutely necessary inspection or repairs, no reservoir shall at any time be drawn off below the low flow line, or to such extent as to expose isolated pools which may cause unsanitary conditions, unless due provision is made for draining such pools into the lowest water level of such reservoir. It shall be unlawful for any officer or person in charge of any reservoir to neglect the provisions of this section.

3. It shall be unlawful for any person to open or close or cause to be opened or closed a gate or gates in any dam constructed pursuant to the provisions of this title without the consent of the board or for any person to interfere in any way with the operation of, or injure a regulating reservoir.

4. When the flow of a river at any water power plant thereon falls below the average normal flow thereof, the then natural flow of the river at a reservoir dam thereon shall not be restricted without the consent of the owner of such power plant.

5. No regulating reservoir shall be constructed pursuant to the provisions of title 21 of this article of a capacity greater than is required to maintain the average flow.

6. The expense of maintenance and operation of any existing reservoirs shall be paid as now provided by law until such reservoirs are taken over by the board pursuant to the provisions of title 21 of this article, and thereafter such expense shall be paid as herein provided for the maintenance and operation of reservoirs constructed pursuant to title 21 of this article.

#### § 15-2135. Hearings; hearing officers; determinations.

Whenever the department is empowered under the terms of title 21 of

this article to make a determination it may hear testimony and take proofs material for its information and may appoint a hearing officer by a written appointment, for that purpose. Every hearing officer so appointed shall be authorized to take such testimony and hear such proofs as may be material to the inquiry and report the proofs and testimony so taken, with his opinion as to the facts established thereby, to the department. The department may make such determination from the proofs and testimony taken before it or before such hearing officer or from any other data which shall be satisfactory to it, and the expenses of taking such testimony or proofs shall be deemed a part of the expense of the improvement to which it relates.

§ 15-2137. Hudson River-Black River Regulating District; old boards abolished; new board created.

1. The Hudson River Regulating District and the Black River Regulating District created pursuant to this article are hereby consolidated into a single district, to include the areas of both such districts, and to be known as the Hudson River-Black River Regulating District.

2. Except as hereinafter provided, the board of the Hudson River Regulating District and the board of the Black River Regulating District are hereby abolished, and all of the jurisdiction, functions, powers, duties and obligations possessed or exercised by, or for which commitments have been made by, such boards, including lands or property acquired, moneys of the boards, and actions taken or determinations made by such boards, are hereby transferred to, assigned to and devolved upon the Hudson River-Black River Regulating District and its board.

3. Notwithstanding any provision of titles 21, 23 and 25 of this article, a board of the Hudson River-Black River Regulating District is hereby created to consist of seven members to be appointed by the governor not less than three of whom shall be residents of the territory comprising the Black River area and not less than three of whom shall be residents of the territory comprising the Hudson River area. The governor shall appoint one member for a term ending September 1, 1960, one for a term ending September 1, 1961, one for a term ending September 1, 1962, one for a term ending September 1, 1963, and one for a term ending September 1, 1964, and thereafter, on the expiration of their respective terms of office, appointments shall be made for terms of five years. The governor shall appoint two additional board members, each of whom shall serve for a term of five years from the effective date of his or her appointment; provided, however, that the board members first appointed on or after the effective date of the chapter of the laws of two thousand five which amended this subdivision shall serve an initial term of two years from the effective date of such appointment. The governor shall fill any vacancy on such board within thirty days after it occurs for the remainder of the term of office.

§ 15-2139. Hudson River Regulating District and Black River Regulating District: transfer of functions; pending actions and proceedings; interpretation of documents; existing rights and remedies.

1. Except as hereinafter provided, the contracts, books, maps, plans, papers, records and property of whatever description within the jurisdiction or under the control of the Hudson River Regulating District or the Black River Regulating District, including moneys

appropriated and available to such districts, pertaining to or used in connection with the exercise or performance of the functions, powers and duties hereby transferred and assigned, shall be delivered to the secretary of the board of the Hudson River-Black River Regulating District, who is hereby authorized to take possession thereof.

2. For the purposes of succession, the functions, powers and duties transferred, assigned to, and devolving upon the Hudson River-Black River Regulating District shall be deemed to constitute a continuation of such functions, powers and duties exercised by the Hudson River Regulating District and the Black River Regulating District, and the acts, orders, rules, regulations and determinations of such districts shall have, and continue with, the same force and effect as though done by or made by the Hudson River-Black River Regulating District.

3. Any business or matter heretofore undertaken or commenced by or before the Hudson River Regulating District or the Black River Regulating District, or any action or proceeding heretofore brought by or against such districts, pertaining to or connected with the functions, powers and duties hereby transferred and assigned to the Hudson River-Black River Regulating District may be conducted, completed, prosecuted and defended by and in the name of the Hudson River-Black River Regulating District. In all such actions and proceedings the Hudson River-Black River Regulating District, upon application to the court, may be substituted as a party.

4. When the Hudson River Regulating District or the Black River Regulating District is referred to or designated in any law, contract or document, such reference or designation shall be deemed to refer to and include the Hudson River-Black River Regulating District so far as such law, contract or document pertains to matters which are within its jurisdiction by reason of such transfer and assignment of functions, powers and duties.

5. No existing right or remedy of any character shall be lost, or affected by reason of the provisions of sections 15-2137, 15-2139 and 15-2141.

§ 15-2141. Hudson River Regulating District and Black River Regulating District: funds of the board.

1. Notwithstanding the consolidation of the Hudson River Regulating District and the Black River Regulating District into a single district, effectuated by this title, or any other provision of title 21 of this article, moneys constituting the respective "general fund" or "debt service fund" or other fund or funds of either the Hudson River Regulating Board or District or the Black River Regulating Board or District, shall remain and be kept separate and apart and shall be applied for the cost of maintenance and operation in the area of the appropriate district and to pay the debts and obligations of the appropriate board or district, on whose account such moneys were received.

2. Notwithstanding any provision of sections 15-2137 and 15-2139 or any other provision of title 21 of this article, all moneys hereafter received by the Hudson River-Black River Regulating District and its board, as consolidated, by reason of assessments or from the sale of obligations issued or from other source, all for the purposes of the respective areas heretofore comprising the Hudson River Regulating District or the Black River Regulating District, shall be kept separate and apart and shall constitute "general funds" and "debt service funds"

and other fund or funds with the same force and effect as funds heretofore constituted by the Hudson River Regulating Board or District and by the Black River Regulating Board or District and shall be applied solely for the cost of maintenance and operation in the respective areas from which the moneys were received and to pay the debts and obligations accrued or as they become due in the areas where the debts and obligations were incurred, provided, however, that the expenses of the board, as consolidated by this part, and of its officers and employees shall be paid from the appropriate "general funds" in the same proportion as moneys are annually collected from the respective areas. The provisions of section 15-2129, in so far as the same are applicable and not inconsistent herewith, shall apply as they relate to the "general fund", "debt service fund", and to the fund or funds of the district.