

Environmental Conservation

ARTICLE 15 WATER RESOURCES

TITLE 23 RIVER IMPROVEMENT

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§ 15-2301. Legislative purpose.

The purpose of title 23 of this article is to provide a method by which a project may be undertaken to improve the channel, construct dikes or regulate the flow of a river for the protection of life, property and the public health or welfare from damage by floods, such work in general to be done at the expense of the owners of the properties and of the political subdivisions of the state benefited thereby.

§ 15-2303. River improvement districts.

1. Bodies corporate which shall consist of and be known as river improvement districts may be created as herein provided to carry out the purposes of title 23 of this article on some particular stream or part thereof. Such river 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 and to 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 23 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, unless such district be combined with a river regulating district as provided below. Any watershed of the state or any integral part of such watershed may be created into a river improvement district pursuant to the provisions of title 23 of this article. The debts, liabilities and obligations incurred by a river 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. Any river improvement districts heretofore formed under the provisions of this chapter are hereby declared to be bodies corporate and all the provisions of this section shall be applicable to such river improvement districts. The general provisions and definitions appearing in sections 15-1903 and 15-2101 are also applicable to title 23.

2. Any county, city, town or village, or any person or persons owning lands situated on, bordering on or near any river or watercourse may present to the department a petition, duly verified, praying for the formation of a river improvement district. The petition shall set forth the facts as to the effects on life, health, welfare and property of the present flow of the stream and may state the method whereby the petitioners believe that the conditions complained of can be remedied or bettered. The department may by rule prescribe the form and nature of the contents of such petition. On receipt of such petition the department shall cause the matter to be investigated. The department may make tentative determinations as to remedial measures, what properties would be benefited, the cost of the work and the division of such costs between public corporations and private owners; or it may find that the relief sought is impracticable or not of sufficient importance to warrant state interference.

3. Notice of a hearing shall be given as follows:

a. The department shall set forth the material in subdivision 2 above in a report which shall be filed and notice of such filing, together with the notice of a public hearing thereon, shall be given. If the report is favorable, the notice shall also state that the department contemplates the making of a survey and of an assessment of the costs of the project, the costs of which survey and assessment will be assessed on the properties and public corporations surveyed or assessed as beneficiaries.

b. Whenever the department is required to give notice of a hearing or of any act performed or contemplated, it shall be given in accordance with the provisions of subdivision 1 of section 15-0903.

4. At the hearing the department shall hear testimony and arguments with regard to the proposed project. Thereafter the department shall determine whether the public health, safety or welfare require the formation of the district and shall make a final order with regard thereto. Such an order forming a district shall describe the boundaries thereof and state the name of the district and shall include orders to make surveys, studies, estimates and assessments. The final order shall be filed and notice of such filing given.

5. The department may proceed to make such surveys of the lands in the proposed district and the boundaries thereof and of the river and its tributaries and such other areas as may be necessary. For the carrying out of the purposes of this title 23 the department and its authorized agents may enter upon any such land as in its judgment may be necessary, the district being liable only for actual damage done thereby. The amount of such damages may be agreed upon between the department and the owner or occupant of such lands or if they cannot agree the amount of such damages shall be ascertained and determined by proper court action.

6. After the completion of the surveys the department shall prepare maps of the proposed district showing the boundaries thereof, the boundaries and area of each public corporation in so far as it lies within the district, the boundaries of each parcel of land in the district which is to be directly assessed, together with the name of the owner thereof as far as the same may be ascertained. Where a parcel is

intersected by the boundary of a public corporation, the area in such parcel in each such public corporation shall be separately given. The boundaries shall include all properties benefited, and may include properties not benefited if necessary to make the district a continuous area with reasonably simple boundaries. Such maps shall also show as far as may be necessary the topography, and the natural and artificial features of the lands within the district or elsewhere. The department shall also show on such maps and other plans the location and general structural details of such works as may be required for the proposed improvement. The department shall also prepare a general description of the proposed works and an estimate of the cost of constructing such works.

7. The department shall also determine the amount of benefit which will accrue to each parcel of land in the district and shall apportion the cost of such work among such parcels in proportion to the benefit which each will derive therefrom. If the department finds that any public corporation will be benefited in its corporate capacity, it shall state what proportion of the total cost of the works or of the various parts thereof shall be borne by such public corporation and only the remaining portion of the work shall be assessed on the individual owners. The department shall prepare a statement of its assessment and apportionment. Certified copies of such maps, plans, estimates and other papers and of the assessment and apportionment shall be filed and notice of such filing and of the time and place for the hearing thereof shall be given.

8. Thereafter the department shall proceed to hold the hearing and to consider the testimony and arguments presented thereat. If it shall appear that additional areas should be included in the district and that additional surveys are necessary, the department shall so determine and may proceed to make such surveys in the same manner as is provided for the original surveys. Upon completion of such hearings the department shall determine whether or not it is to the public interest to grant the petition, form the district and carry out the project, whether all properties which will be benefited by the proposed works are included in the district and whether the assessment and apportionment is just and equitable, and it shall make a final order with regard thereto. Certified copies of such final order shall be filed and notice of such filing given. After the expiration of the time for review of such an order, if no review is had, or after the review is completed, the department shall cause the same to 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 as made or as modified on review shall have been recorded.

9. Any determination, apportionment, decision, order, maps or plans which the provisions of this title require to be filed and notice of such filing to be given, except in the case where a hearing is to be held may be reviewed by any interested party as provided in section 15-0905.

10. Wherever it is required in title 23 of this article 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. Wherever it is required in title 23 of this article that any document be recorded, the department shall cause a certified copy thereof to be sent to the clerk of each county, any part of which is included in the district or proposed district, and such clerk shall thereupon record such document.

11. The department may change the boundaries of a district, consolidate two or more districts or subdivide an existing district into two or more districts, the procedure for which shall be the same as is provided for herein for the formation of a district, in so far as the same is applicable.

12. Apportionment of costs shall be as follows:

a. Whenever it is practicable so to do, the department shall include in the cost of any survey made, or construction, maintenance or repair work carried out under provisions of title 23 of this article the cost of all proceedings, hearings, notifications, filings, recordings, engineering, legal and all other services and expenses which lawfully may be incurred, including the cost of acquisition of lands and rights-of-way, suits and prosecutions.

b. To pay the expenses of the surveys, preparation of maps, plans and estimates, the making of the assessment, the holding of the required hearings and other matters required by the provisions of this section, the department may make funds available therefor. The assessment of such costs shall be divided between public corporations and private persons in the manner set forth in the district assessment; the remaining amount shall be assessed on all the properties in the proposed district as shown by the maps filed in proportion to the assessed valuation of such properties. In the event that any such property is cut by the district boundary, the department shall request the local assessors to divide the assessment between the portion within and that without the district and it shall be the duty of such assessors to make such division.

13. At any time after the formation of a district petition may be made to the department for additional construction or for major changes in the project already adopted or the department, of its own motion, may suggest such changes or additions. The procedure shall be that specified in this section as far as it is applicable. The same procedure may also be followed in order to authorize the raising of additional funds for a project already adopted, should it be found that sufficient funds were not originally authorized.

§ 15-2305. River improvement associations.

There shall be in each river improvement district an association to be known by the name of the district, as.....River Improvement Association. It shall be the object of this association to represent the interests of its members before the department and elsewhere and to serve as a channel of communication between the members thereof and the department. Each public corporation and each owner of land within the district and each lessee of 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 the district the association, if already formed, shall call a meeting of the members of the association and perfect a permanent organization. If no association has been formed the department shall call a meeting for the purpose of forming such an 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 a list of such members on request. The association may require the payment of annual dues or contributions to the association treasury, the amount of such contribution and the manner of collecting the same to be decided by the association. 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 what further work, if any, it desires during the ensuing year. Immediately after the close of the annual meeting the secretary of the association shall submit to the department a list of names and addresses of the officers for the year and a petition setting forth the desires of the association.

§ 15-2307. Construction contracts.

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 ten 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 day's work under his direction. 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 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 23 of this article. The department is authorized to furnish copies of such contract plans and specifications to prospective bidders at a price which it shall find to be reasonable and to pay the funds so received into the river improvement district fund. 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 deposit shall be forfeited to the department and paid by it into the river improvement district fund; otherwise such deposits shall be returned. The proposals received pursuant to the advertisement shall be publicly opened and read at the time and place designated. The department may reject any and all bids and re-advertise and award the contract in the manner herein provided whenever in its judgment the interests of the district will be enhanced thereby.

3. 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, firm or corporation 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. 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 re-advertised 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.

4. Partial payment for work actually done may be provided for in the contract 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 river improvement district fund as hereinbefore provided.

§ 15-2309. Entry upon lands, structures and waters; acquisition of property.

The department, its members, officers, employees and agents may enter upon any land, structures and waters necessary for the purposes of title 23 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 taken, or on or over which an easement is to be taken, 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 hereinafter provided as part of the necessary expense incurred for the purpose of such improvement. If the department cannot agree with the owners upon the compensation and damages to be paid for the property or easement to be so taken the department shall proceed to acquire title thereto under the provisions of the eminent domain procedure law. All real property acquired by a river improvement district shall be exempt from taxation.

§ 15-2311. Financing of river improvements; assessment and collection of cost; correction and revision of assessments.

1. After a river improvement project has been duly authorized and the determination of benefits and the apportionment of cost thereof duly recorded, the department may finance such improvement pursuant to the Local Finance Law. If obligations are issued, they shall not be construed in any event as obligations of the state, and neither the state, the department, nor any member thereof personally shall be obligated to pay the principal or interest therefor. Such obligations 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. The proceeds thereof 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 approved 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. Moneys received under the provisions of title 23 of this article shall constitute a fund to be known as the "river improvement district fund," and the portion thereof applicable to each improvement shall be separately kept by the Comptroller and the same are hereby pledged to the payment of the cost and expenses of such improvement and the Comptroller is authorized and directed to pay therefrom the costs and expenses of such improvement upon the order of the department or the authorized officer thereof.

2. The department shall, on or before September 1 following the issuing of any obligations and annually thereafter, prepare a statement of the amount to be raised during the ensuing year, in order to retire the obligations maturing during such year, together with the interest thereon and the estimated cost of maintenance of such improvement for the ensuing calendar year. Such statement shall be approved by the Comptroller; it shall show the amount of the proportional share thereof to be paid by each county, town, city or village respectively as determined by the department, and such county, town, city or village shall cause the same to be assessed, levied and collected in the same manner as provided by law with reference to general taxes, and paid to treasurer of the county, who shall forthwith forward the same to the Comptroller to be by him paid into the river improvement district fund applicable to such improvement; it shall also show the amount of the proportional share thereof to be paid by the lands and properties collectively in such improvement district within each county during such year, to be assessed, levied and collected as hereinafter provided. Copies of this statement shall be transmitted on or before September 1 to the Comptroller, 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, the mayor of each city and the mayor of each village affected by such improvement.

3. The assessors of each town and city included in such improvement district are hereby required to enter in a separate column in the annual assessment roll of such town or city before the delivery thereof to the county legislative body the description by number corresponding with the number thereof on said survey, map and descriptions so filed in the county clerk's office, each parcel of land and each designation or description of property within the county in such improvement district, together with the name of the then owner or owners thereof as far as the same can be ascertained by the assessors, and set opposite such number and description of each separate parcel or property, in the column of the roll for the total assessed valuation of property, the amount of benefit by reason of such improvement received by such parcel or property as stated and specified in the determination of the department as modified by the court if so modified, and recorded in the office of the clerk of the county.

4. The county legislative body shall each year at the time the annual tax levy is made levy upon each separate parcel and property in the county within such improvement district appearing upon the assessment rolls of the towns and cities included therein as herein provided, such portion of the amount to be paid by all of the property in the county within such improvement district appearing by the statement of the

department and the Comptroller made to the board as in title 23 of this article provided as the amount so assessed against such parcel or property on the rolls for benefit accruing thereto bears to the aggregate amount so assessed on the rolls against all of such lands and properties, and the taxes so levied shall be collected in the same manner as general taxes are levied and collected, and shall be like liens as general taxes until the amount thereof is paid to the county treasurer of the county, superior in force and effect to all other liens except unpaid general taxes; provided, however, that the collection of such tax shall only be enforced by a sale of the land or property assessed.

5. 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 statement of the department and Comptroller of the previous year, to the Comptroller, who shall pay the same into the river improvement district fund. 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 sales of property by county treasurers for unpaid taxes and redemption of lands.

6. In the event that obvious errors or discrepancies should be discovered in any assessment of benefits or apportionment of cost made under the provisions of title 23 of this article, the department may correct the same by filing corrected copies of the statement of such assessment and apportionment and following the procedure specified above. Should such correction be made the county legislative body are 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. Such 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 be subdivided. The department shall file and record its findings in such cases as amendments to the original or corrected assessment, and shall give notice to the parties affected, but need hold no hearing thereon unless such hearing be demanded within ten days after notice is given by a party affected. None of the above proceedings shall be held to reopen the determination of an assessment or apportionment, or both, except as to the particular matter involved. Should the department at any time find that a former assessment 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 section 15-2303.

§ 15-2313. Operation, maintenance, repair and extension of river improvements.

1. The care, operation and maintenance of any works of the river improvement district shall be subject to the control and supervision of the department. It shall be the duty of the department to maintain any works constructed by it in serviceable condition. To that end the department is authorized to hire employees, purchase or rent land, buildings, tools or machinery, to let work by contract or to carry out projects by day labor. The procedure to be followed for the authorization, financing and assessment of the cost of such work or

purchases shall be that specified in section 15-2303 except that 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 subdivision 2 below.

2. Major repairs, alterations, extensions and improvements in any river improvement district may be made by the department on petition therefor and after procedure thereon similar to that specified in section 15-2303 hereof, for original construction. If additional surveys are required, they may be authorized and paid for as provided in section 15-2303 hereof, except that the cost of surveys and other expenses may be included in the cost of the improvement and assessed on the properties benefited in accordance with the benefits to be derived from such improvements. Except where the department shall otherwise determine, the cost of improvements and repairs on works already built under the provisions of title 23 of this article, shall be assessed in the same manner as the original cost was assessed, but the department may make a new assessment by following the procedure above specified. Any such project for repairs, alterations, extensions and improvements may be initiated by the department.

§ 15-2315. Unlawful interference with improvement works.

It shall be unlawful for any person to damage, alter, change or interfere with any works constructed under the provisions of title 23 or to open or close, or cause to be opened or closed, a gate or gates in any dam or dike or a gate in any head race or obstruct any channel constructed under title 23 so far as the same relates to such improvements, without the consent of the department. After the improvement of any channel or watercourse has been authorized it shall be unlawful for any person or public authority to construct any dam or other structure on the bed of such stream or any bridge across it until the department has found that such construction or bridge will not unduly affect the projected or completed improvement.

§ 15-2317. Construction of reservoir on state-owned lands in a forest preserve.

If as a part of any project for the improvement of a district it is necessary to construct a reservoir on any part of the forest preserve, the department must, before making the final order, cause such lands to be accurately surveyed and the boundaries of the lands needed and the high flow line of the reservoir to be accurately fixed and thereafter, after due notice, to hold a public hearing as to whether such lands are required for such public use and, if so required, as to what will be a reasonable return to the state upon the value of the rights and property of the state so used and the services of the state as to such lands if such improvement is made. If it be determined that such lands are so required, such determination must be incorporated in the final order with a statement of the boundaries, the high flow line, the acreage and the amounts to be paid to the state for the lands and services. Such payments to the state and the cost of building such portions of the reservoir as are on state forest preserve lands shall be apportioned like other costs and expenses on the municipalities, other public corporations and properties benefited to the extent of the benefits received. If additional land is required it shall be acquired or taken

in the name of the state and the entire reservoir shall be the property of the state, although paid for by the district and dedicated for the purposes for which constructed. Such reservoir shall always be operated by the department or other state authority for the benefit of the district. The reasonable return to the state shall be fixed for terms not exceeding ten years and may be changed at the beginning of any new term. The high flow line of a reservoir as referred to in title 23 of this article is hereby defined as the level of the water in the reservoir when the greatest flood reasonably to be expected is passing over the spillway of the dam with all outlet gates closed. Before any such state lands are flooded, the timber shall be removed therefrom and the construction thereof shall be approved by the Commissioner of Health as not creating or tending to create any unsanitary condition.

§ 15-2319. Payment by the state of part of cost of river improvement.

Should the department find that the state of New York properly should bear a part of the cost of any river improvement, it is hereby authorized to so recommend to the Legislature and it may not proceed further with the project until the Legislature has made the necessary provisions for the payment of such costs or unless the project be so modified as to eliminate state contributions to the cost thereof. Except under the above circumstances the state shall be liable for no costs in connection with any such improvement except that the salaries and general expenses of the members of the department not specifically assigned to the particular project are not to be assessed upon the district.

§ 15-2321. River improvement 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 improvement of a river, as specified in title 23 of this article, 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 river improvement district covering the areas to be benefited by such work by following the procedure set forth in this section, in lieu of the procedure specified in the preceding sections of title 23 of this article.

2. The department may proceed of its own motion to form such district and to authorize the proposed work as though a petition therefor had been filed as provided in section 15-2303. It may negotiate with the federal government, investigate the proposed district and prepare a written report thereon, describing the proposed district and the proposed works, and giving estimates of the cost of the various parts of the work which may be a charge against the proposed district. Such report shall be filed and notice of such filing and of a hearing thereon given as provided in section 15-2303, except that the period of notice provided for in section 15-2303 shall be halved. After the final hearing the department shall determine whether it is in the public interest to form the district and to proceed with the work and in general terms, what public corporations and lands will be benefited thereby. These matters shall be embodied in a written order, which shall, if the action is favorable, contain orders to make surveys, assessments, enter into agreements with agencies of the federal government, acquire lands and rights in lands and all other matters which may be needful for the

carrying out of the proposed project. Such written order shall state whether it is planned to issue obligations pursuant to the Local Finance Law. Certified copies of the determination and order shall be filed and notice of such filing given. Such determination and order may be reviewed pursuant to section 15-0905, but application for review must be made within ten days after such filing. If no review is had, the department shall cause the same to 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, as made or as modified on review, shall have been recorded.

3. 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 to appropriate lands and rights in lands, including sites for camps and appurtenant facilities, access roads, borrow pits, quarries, spoil banks and all necessary and proper matters, to incur contractual obligations, to employ the necessary personnel and generally to do whatever is necessary to carry out the proposed project or projects.

4. After such district is formed and the original federal project authorized, major changes in such project, additional federal projects, changes in district boundaries necessitated by such federal projects or the raising of required additional funds for the work may be authorized by following the pertinent portions of the procedure in section 15-2303 above.

5. Except for such projects as may be carried out by the federal government, any district formed under the provisions of subdivision 2 above shall thereafter continue as a river improvement district, as though formed under the provisions of section 15-2303.