STATE OF NEW YORK

7649

2023-2024 Regular Sessions

IN SENATE

September 11, 2023

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public authorities law and the executive law, in relation to establishing the Oswego river basin authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 8 of the public authorities law is amended by adding a new title 36 to read as follows:

TITLE 36

OSWEGO RIVER BASIN AUTHORITY

Section 2799-aaaaa. Short title.
2799-bbbbb. Definitions.
2799-ccccc. Oswego river basin authority.
2799-ddddd. Organization of the Oswego river basin authority.
2799-eeeee. General duties.
2799-fffff. General powers.
2799-ggggg. Oswego river basin advisory committee.
2799-hhhhh. Oswego river basin intergovernmental council.
2799-iiiii. Acquisition of real estate.
2799-jjjjj. Discontinuance or relocation, or both, of highways, roads and streets.
2799-kkkkk. Taxation of real estate.
2799-lllll. Cemeteries.
2799-mmmmm. Procedure for construction of reservoirs, dams and other flood mitigation structures.
2799-nnnnn. Operation of reservoirs, dams or other flood mitigation structures.
2799-ooooo. Apportionment of cost.
2799-ppppp. Assessments; how levied and collected.
2799-qqqqq. Operation and maintenance charges.
2799-rrrrr. Error in names.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD13168-02-3

2799-sssss. Financing.
2799-ttttt. Reports.
2799-uuuuu. Hearings; hearing officers; determinations.
2799-vvvvv. Title not affected if in part unconstitutional or ineffective.
2799-wwwww. Actions against the authority.

§ 2799-aaaaa. Short title. This title shall be known and may be cited as the "Oswego river basin authority act".

§ 2799-bbbbb. Definitions. As used in this title, the following terms shall have the following meanings:

1. "Real estate" shall include, when used without words of limitation, 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. "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 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 except when necessity or emergency requires the control, regulation, adjustment or monitoring of water flows of such reservoir created by a dam constructed or maintained for power purposes pursuant to section twenty-seven hundred ninety-nine-ooooo of this title, 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 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 this title.

3. "Benefit" or "benefits" shall be interpreted to include benefits to real estate, public or private, to municipal water supply, to navigation, to flood mitigation, to flood emergency response, to agriculture

and to industrial and general welfare by reason of the maintenance and operation of a reservoir, dam or other flood mitigation structure, whether such benefit shall inure to a person, a public corporation or the state. In the event that any reservoir, dam or other flood mitigation structure 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, dam or other flood mitigation structure may accomplish such relief, shall be deemed to have received benefit therefrom.

4. "Authority" means the Oswego river basin authority.

5. "Preliminary expenses" means 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 this title; and the expenses of procuring searches, or abstracts of title of real estate for the purpose of carrying out the provisions of this title.

6. "Regulation" means only such regulation as can be had through the construction, maintenance, operation, monitoring and adjustment of water flows of a reservoir, dam or other flood mitigation structure, excepting as otherwise expressly provided in this title.

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" or "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 include, in addition to the cost of a reservoir, dam or other flood mitigation structure, all preliminary expenses, all expenses of organization of the authority, engineering fees, costs of surveys, plans, advertising, salaries, compensation and expenses of the authority, together with all legal and other expenses, incidental to the construction of such reservoir, dam or other flood mitigation structure up to time of the completion thereof.

10. "Cost of maintenance and operation" shall include all expenses for repairs and upkeep of a reservoir, dam or other flood mitigation structure, all such expenses necessary to the proper operation of such reservoir, dam or other flood mitigation structure for the purposes for which it was constructed and all such part of the compensation and expenses of the authority, its officers and employees after the completion of such reservoir, dam or other flood mitigation structure as are in the judgment of the authority.

11. "High flow line" means the line which will be made around a reservoir, dam or other flood mitigation structure, as applicable, by the water therein when it is at the level of the crest of the reservoir, dam or other flood mitigation structure spillway.

12. "Low flow line" means the line made by the water of a reservoir, dam or other flood mitigation structure, if applicable, 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 authority shall fix and determine.

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

14. "Filing" means, whenever it is required that copies of maps and documents be filed, certified copies thereof shall be filed in the offices of the clerks of each county, town, city or incorporated village, any part of which wholly or partially contained within the Oswego river basin, and made available on the website of the authority.

15. "Recorded" means, whenever it is required that any document be recorded, the authority shall send a certified copy thereof to the clerk of each county, town, city or incorporated village, any part of which wholly or partially contained within the Oswego river basin, and it shall be the duty of such clerk thereupon to record such document and to collect the legal fees therefor.

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

17. "Assessment" means the whole or any appropriate part of the procedure by which the cost of any proceeding or construction project is made a legal charge on certain properties. It may include the determination of enhancements and apportionment of construction and other costs. Assessment includes similar proceedings once specified in former or other general and special laws with regard to drainage.

18. "National flood insurance program" means that act of Congress codified as chapter fifty of title forty-two of the United States code, all acts amendatory thereof and all regulations promulgated thereunder.

19. "Projects and activities" means any action taken by the authority in the implementation of this title.

20. "Oswego river basin" means a watershed in the state of New York comprised of all rivers, streams, creeks, lakes, reservoirs and the surrounding land areas or other drainage, including but not limited to canals, that drains or flows via the Oswego river into Lake Ontario.

21. "Disconnected floodplain" means an area in a floodplain identified by the federal emergency management agency or the department of environmental conservation that is disconnected from rivers and streams by berms, roads, structures, or other development for any reason.

22. "North American vertical datum of 1988" means an elevation surveying system developed by the national oceanic and atmospheric administration, or successor elevation surveying system developed by such administration.

23. "Canal corporation" means the New York state canal corporation.

24. "Reservoir, dam or other flood mitigation structure" means any structure constructed, owned, operated, maintained, or regulated by the authority used to mitigate flood events or to regulate the flow of water in the Oswego river basin, including but not limited to a reservoir, as defined in subdivision two of this section.

25. "Forest preserve" shall have the same meaning as such term is defined pursuant to subdivision six of section 9-0101 of the environmental conservation law.

§ 2799-ccccc. Oswego river basin authority. For the purpose of effectuating the general duties and powers established by this title, including but not limited to, flood mitigation, water flow management, water flow monitoring, emergency management and flood response, and any other duty or power contained in this title, there is hereby created a corporate municipal instrumentality of the state to be known as the "Oswego river basin authority", which shall be a body corporate and politic, and a political subdivision of the state, exercising governmental and public powers, perpetual in duration, capable of suing and being sued, and which shall have the general powers and duties hereinafter enumerated, together with such others as may hereafter be conferred upon it by law.

§ 2799-ddddd. Organization of the Oswego river basin authority. 1. The authority shall consist of seven trustees, who shall serve respectively for terms of one, two, three, four, five, six and seven years, to be appointed by the governor, by and with the advice and consent of the senate. Each trustee shall hold office until a successor has been appointed and qualified. At the expiration of the term of each trustee and of each succeeding trustee, the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for a term of five years, or until a successor has been appointed and qualified. In the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for the unexpired term. Four trustees shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof.

2. Each trustee of the authority, before entering upon such trustee's 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 trustees shall choose from among their own number a chair and vice-chair and shall select a treasurer. The chair shall also act as chief executive officer whose appointment shall be subject to confirmation by the senate. The trustees shall adopt by-laws and rules and regulations suitable to the purposes of this title. The trustees 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 trustees thereof, all owners of real estate in the Oswego river basin and the public, and shall make all such information available on the authority's website.

3. The trustee chosen as chair, as provided in subdivision two of this section, shall receive an annual salary which shall be set by the trustees of the authority, and which shall not exceed the salary prescribed for the positions listed in paragraph (c) of subdivision one of section one hundred sixty-nine of the executive law. All other trustees shall not receive a salary or other compensation. Each trustee shall receive such trustee's reasonable expenses in the performance of such trustee's duties hereunder. The trustee chosen as chair may elect to become a member of the New York state and local employees' retirement system on the basis of such compensation to which such chair shall be entitled as herein provided, notwithstanding the provisions of any general, special or local law, municipal charter, or ordinance.

4. The chief executive officer shall keep and be the custodian of the records of the authority, and of its corporate seal, and shall assist the authority in such particulars as it may direct in the performance of its duties and responsibilities as enumerated in this title. Such offi-

cer shall attest under the corporate seal of the authority all certified copies of the office records and files of the authority that may be required of such officer by the provisions of this title 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 chief executive officer shall also serve as treasurer of the authority unless a separate treasurer is selected by the authority.

5. The authority may employ such attorneys, engineers, agents, assistants and employees as may be necessary, and fix their compensation, including the compensation of its treasurer.

6. The governor may remove a trustee of the authority for inefficiency, neglect of duty or misconduct in office, giving to such trustee a copy of the charges against such trustee and an opportunity of being publicly heard in person or by counsel in such trustee's own defense upon not less than ten days' notice. If such trustee shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such trustee and the findings thereon, together with a complete record of the proceedings.

§ 2799-eeeee. General duties. 1. (a) (i) Upon its creation the authority shall prepare a draft Oswego river basin management plan (hereinafter referred to as the "draft basin management plan") for the regulation of the flow of water in the Oswego river basin. Such draft basin management plan shall show:

(1) the existing sites of reservoirs, dams or other flood mitigation structures on such basin, whether any reservoir, dam or other flood mitigation structure now existing can be and should be enlarged and to what extent, and the approximate number of acres of land flowed or to be flowed by each reservoir, dam or other flood mitigation structure;

(2) available and feasible sites of reservoirs, dams or other flood mitigation structures on such basin and the approximate number of acres of land to be flowed by each such reservoir, dam or other flood mitigation structure;

(3) whether any of such land identified by items one and two of this subparagraph is owned by the state, if any, and 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 a reservoir, dam or other flood mitigation structure to be created or enlarged as would in the judgment of the authority be required for the protection, maintenance and operation of such reservoir, dam or other flood mitigation structure for the effectuation of the general duties and powers of this title;

(4) a system to notify emergency first responders, including the division of homeland security and emergency services, local police departments and other emergency first responders wholly or partially contained within the Oswego river basin, of high flow and flood flow events, and other emergency events as determined by the authority;

(5) other strategies to address any of the general duties enumerated or detailed in this section;

(6) a system for the procedure for the monitoring of water flows throughout the whole Oswego river basin; and

(7) a map of all disconnected floodplains in the Oswego river basin.

(ii) Additionally, the draft basin management plan shall be accompanied by such maps, profiles and other data and descriptions as may be necessary to set forth properly the duties detailed in this section,

including, but not limited to 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, dam or other flood mitigation structure. Further, the draft basin management plan shall use the North American vertical datum of 1988 as a common datum to communicate all elevations. In the case that maps, plans and specifications for any such reservoir, dam or other flood mitigation structure at or near the site thereof are on file in any other department of state government or other state entity and would be an aid in the preparation of such draft basin management plan, such maps, plans and specifications shall be available to the authority for such purpose.

(b) The draft basin management plan shall be developed in consultation with the Oswego river basin advisory committee established pursuant to section twenty-seven hundred ninety-nine-ggggg of this title and other stakeholders as determined by the authority.

(c) The authority shall hold at least two regional public comment hearings on such draft basin management plan and shall allow at least one hundred twenty days for the submission of public comment prior to the approval of such plan.

(d) The authority shall provide meaningful opportunities for public comment from all segments of the population that will be impacted by the draft basin management plan, including a community enrolled in the national flood insurance program.

(e) Upon the completion of such draft basin management plan, public hearings and the public comment period, the authority may approve such plan and shall certify such plan by resolution. The authority may, by resolution, chose to modify such plan and approve it as so modified. Once approved by the authority, such plan shall be known as the "official Oswego river basin management plan" or "official plan" for the regulation of the flow of water in the Oswego river basin. Such plan in like manner may be altered from time to time, provided such alteration shall not affect any assessment already made and such alteration shall only occur after a period of public comment and a public hearing. As soon as practicable, the authority shall make the draft Oswego river basin management plan and the official Oswego river basin management plan available to the public for inspection and examination at every office of the authority and on the authority's website. Digital files of such plans shall also be made available, upon request, to the clerk of each county, city, town or village in which the Oswego river basin or a portion thereof is located.

2. The authority shall create and conduct an education and outreach campaign in the Oswego river basin, and in doing so may incorporate strategies from any communication plan developed by the committee.

3. Any projects or activities, including the construction of any reservoirs, dams or other flood mitigation structures, undertaken by the authority shall ensure full compliance with article eight of the environmental conservation law.

§ 2799-fffff. General powers. 1. The authority shall have power to promulgate rules and regulations necessary for the effectuation of the powers and duties enumerated in this title.

2. The authority 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 this title, and shall be liable only for actual damage done.

3. The authority shall have and may exercise all of the powers enumerated in this title, and in addition thereto all such other powers as are

necessary and proper to carry into execution the powers expressly granted to it, including the power to:

(a) make such channel improvements as may be necessary to prevent damage to downstream properties by the waters released from a reservoir, dam or other flood mitigation structure;

(b) mitigate any and all flood events;

(c) manage and adjust the flow of water in the Oswego river basin;

(d) monitor the flow of water in the Oswego river basin; and

(e) coordinate and cooperate with emergency management and flood response, if necessary and appropriate.

4. Notwithstanding any law, rule or regulation to the contrary, the authority shall have charge of the control, operation, maintenance, and adjustment of water levels of all reservoirs, dams or other flood mitigation structures currently in existence, or hereafter constructed, along all points and portions of the Oswego river basin for the regulation of the flow of water in such basin, including any reservoir, dam or other flood mitigation structure owned, operated, controlled or otherwise overseen by a county, city, town, or village, excluding however:

(a) a reservoir, dam or other flood mitigation structure which is or may be maintained primarily to provide water for the canal system of the state, provided however, that the authority may have charge of the control, operation, maintenance, and adjustment of such reservoir upon an agreement or contract between the authority and the canal corporation; and

(b) reservoirs owned or operated by a holder of a license issued under the federal power act, provided however, that the authority may have charge of the control, operation, maintenance, and adjustment of such reservoir upon an agreement or contract between the authority and such holder of a license issued under the federal power act.

5. The authority 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 authority at any location in the Oswego river basin, and shall preserve a record thereof available to the public on the authority's website. Digital files of such stream gauges and rain gauges shall also be made available, upon request, to the clerk of each county, city, town or village in which the Oswego river basin or a portion thereof is located.

6. The authority, subject to the limitations of this title, shall have a dominant right of eminent domain over any right of eminent domain of public corporations. In exercise of such right, the authority shall take due care to ensure no unnecessary damage to other public utilities, and in the case of failure to agree upon the mode and terms of interference, the authority shall take due care not to interfere with any operation and usefulness beyond the actual necessities of the case, and shall pay due regard to other public interests involved.

7. The authority 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 such authority shall deem just and proper, provided, however, that the use of such lands shall not interfere with the purposes for which they were acquired.

8. The authority shall have the power to coordinate with the Onondaga county water authority as established by title seven of article five of this chapter. Further, the authority shall immediately, upon making a request to the Onondaga county water authority, assume all duties and powers of the Onondaga county water authority related to the effectuation of the general duties and powers enumerated in this title in order to mitigate flood events in the Oswego river basin, including but not limited to the control, operation, maintenance, and adjustment of water levels of all reservoirs, dams or other flood mitigation structures owned or operated by the Onondaga county water authority. The Onondaga county water authority shall regain all powers and duties ceded to the authority at the end of a flood event, as determined by the authority, or upon the relinquishment by the authority.

9. The authority shall have the power to coordinate with an authority established pursuant to title eight-a of article five of this chapter. Further, the authority shall immediately, upon making a request to any such authority established by title eight-a of article five of this chapter, assume all duties and powers of such authority established by such title related to the effectuation of the general duties and powers enumerated in this title in order to mitigate flood events in the Oswego river basin, including but not limited to the control, operation, maintenance, and adjustment of water levels of all reservoirs, dams or other flood mitigation structures owned or operated by an authority established by title eight-a of article five of this chapter. An authority established by title eight-a of article five of this chapter shall regain all powers and duties ceded to the authority at the end of a flood event, as determined by the authority, or upon the relinquishment by the authority.

§ 2799-ggggg. Oswego river basin advisory committee. 1. There is hereby established within the authority the Oswego river basin advisory committee (hereinafter referred to as "the committee"), consisting of twenty-one members to advise the chair of the authority on matters relating to the state's role in managing the Oswego river basin, including but not limited to regional and federal activities aimed at regulating the flow of water, flood mitigation, the coordination of emergency flood response, domestic, municipal, industrial and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, fish and wildlife habitat and a balanced ecosystem.

2. The committee shall:

(a) advise the chair of the authority on the creation, implementation and modification to the draft Oswego river basin management plan and the Oswego river basin management plan as developed pursuant to section twenty-seven hundred ninety-nine-eeeee of this title;

(b) advise the members of the Oswego river basin intergovernmental council, as established pursuant to section twenty-seven hundred ninety-nine-hhhhh, as needed; and

(c) annually identify specific research or program needs for funding from state, federal, private or other sources. Such annual program, with as much detail on the scope and expectations of each project as is practical, shall be submitted to the authority, which shall select specific projects from the program, recommended by the committee, and shall furnish the governor and the director of the division of the budget such estimates and information for inclusion in the budget of the state.

3. The governor shall appoint nine members to the committee, with one member representing an institution that performs research on the issues and the problems of the Oswego river basin, one member representing a

labor union whose members derive their livelihood from the Oswego river basin, three members representing environmental or conservation organizations with interests in the Oswego river basin, two members representing business organizations whose commercial interest lies in activities in or around the Oswego river basin, one member representing a municipality wholly or partially contained within the Oswego river basin and one member representing a county having a population of four hundred fifty thousand people or more wholly or partially contained within the Oswego river basin. The temporary president of the senate and the speaker of the assembly shall each appoint two members who have a demonstrated knowledge in Oswego river basin issues. The chair of the authority, the commissioners of the departments of environmental conservation, health, transportation, and economic development, the director of the canal corporation, the chair of the power authority of the state of New York and the commissioner of the division of homeland security and emergency services or their designated representative shall be ex-officio members. The appointed members of the committee shall serve terms of three years, provided, however, that of the members first appointed by the governor, three members shall be appointed for a term of three years, three members shall be appointed for a term of two years and three members shall be appointed for a term of one year. An appointment to fill a vacancy shall be made for the remainder of the affected term in the same manner as the original appointment was made. Such appointment shall be made within sixty days of the date the position becomes vacant. Members shall serve until their successor has been appointed.

4. The advisory committee shall meet for the first time within one hundred eighty days after the creation of the authority pursuant to this title, and thereafter shall meet a minimum of three times annually.

5. Advisory committee members shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred during the performance of their duties.

6. The committee shall submit a report by the first of January next succeeding the date this section shall take effect and annually thereafter to the governor, the speaker of the assembly and the temporary president of the senate. Such report shall include an evaluation of the problems and conditions of the Oswego river basin, recommendations for the authority and legislative recommendations.

7. The committee shall develop a communication plan for high flow and flood flow events and submit such plan and recommendations to implement such plan to the authority, the governor, the speaker of the assembly and the temporary president of the senate. Further, the authority shall make such communication plan available on the website of the authority and share such communication plan with other state entities when requested.

§ 2799-hhhhh. Oswego river basin intergovernmental council. 1. The authority may establish, by the passage of a resolution, an Oswego river basin intergovernmental council (hereinafter referred to as "the council") which shall consist of members from any county, city, town, village, school district, local police department, state entity, a holder of a license issued under the federal power act, lake association or private entity, or any combination thereof, operating or contained wholly or partially within the Oswego river basin. Such establishment of a council shall effectuate the implementation of the authority's general duties or powers and improve coordination or communication with public and private entities which are wholly or partially contained or operate within the Oswego river basin or otherwise improve flood mitigation

efforts in the Oswego river basin. When an Oswego river basin intergovernmental council is established, such council shall have the power to:

(a) make surveys and studies and conduct research programs to aid in the solution of local flood mitigation problems and in efforts to improve authority administration and services;

(b) provide for the distribution of information resulting from such surveys, studies and programs created, established or produced by the authority or the council;

(c) consult and cooperate with appropriate state, municipal and public or private agencies in matters affecting the powers and duties of the authority; and

(d) devise recommendations for obtaining greater economy and efficiency in the planning and provision of authority services and provide such recommendations to the authority.

2. When a council is established pursuant to subdivision one of this section, the members of the council shall adopt by-laws to govern its activities. The chair of the authority shall be the chair of the council established by this section and shall appoint members to the council. Such chair shall select from the members a secretary and other necessary officers to serve for such period as the members shall agree.

3. The authority shall provide the council with such facilities, assistance and data as necessary to assist the council to carry out its duties. Additionally, all other agencies of the state or subdivisions thereof may, at the request of the chair, provide the council with such assistance and data as is necessary for the council to carry out its duties.

§ 2799-iiiii. Acquisition of real estate. 1. The authority shall, subject to the provisions of this section, have the right to condemn for the use of the authority any real estate which is determined to be necessary for the purpose of carrying out any provisions of this title. It may acquire title to such real estate by agreement with the owner of such real estate and upon payment therefor of the amount of compensation to be paid to such owner. Additionally, the authority may acquire title to real estate by agreement with the owner of such real estate and upon payment therefor of the amount of compensation to be paid such owner for the purpose of restoring a disconnected floodplain in the Oswego river basin.

2. If any real estate belonging to any county, city, town, village or school district is required for the purposes of this title, the county legislative body for such county, the mayor and common council or governing body for such city, the town authority for such town, the village authority for such village, the trustees or authority of education of any school district for such authority, or any persons, body or bodies, having a like power, acting for a public corporation may grant or surrender such real estate for such compensation as may be agreed upon by such official representatives and the authority. 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.

3. If the authority cannot agree with the owner upon the compensation and damages to be paid for the real estate so acquired, it shall serve upon such owner a notice that such real estate described therein has been acquired by the authority for the purposes of this title, and shall proceed to acquire title of such real estate under the provisions of the eminent domain procedure law.

4. If any real property, owned by a corporation having the power by law to exercise the right of eminent domain, is acquired pursuant to the eminent domain procedure law, the authority 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.

5. If any such payments are made directly by the authority, the amount so paid shall be refunded to the authority out of the general fund of the authority, as provided in subdivision seven of section twenty-seven hundred ninety-nine-sssss of this title.

6. Title to all real estate acquired pursuant to the provisions of this title, except where expressly provided otherwise, shall be acquired in the name of the state of New York, and when so acquired shall be deemed to be acquired for public use.

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

§ 2799-jjjjj. Discontinuance or relocation, or both, of highways, roads and streets. 1. If the authority 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, dam or other flood mitigation structure, or other facility or structure necessary for the effectuation of the duties of the authority, for which preliminary plans shall have been adopted as provided in this title or because of its interference with the effectuation of the duties of the authority established by this title, it may discontinue such public highway, road or street. If the authority shall determine that public interest so requires, it may relocate such highway, road or street, or the part being discontinued, along a course, or if discontinued due to interference with a reservoir, dam or other flood mitigation structure, wholly or partly within or without the high flow line of such reservoir, dam or other flood mitigation structure, and acquire, with funds of the authority applicable to the expense of such reservoir, dam or other flood mitigation structure, in the manner provided in section twenty-seven hundred ninety-nine-iiiii of this title, 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 authority 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 city, town and village containing any part of the relocated or new highway, road or street and shall be made available on the authority's website. 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 commissioner of transportation and with such commissioner's 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 authority, 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, is 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 commissioner of transportation. If the highway, or part thereof, which is discontinued is 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 authority 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 such highway, street or road 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.

§ 2799-kkkkk. Taxation of real estate. Lands owned by the state and acquired pursuant to the provisions of this title, exclusive of the improvements erected thereon by the authority, shall be assessed and taxed in the same manner as state lands subject to taxation pursuant to title two of article five of the real property tax law. Provided, however, that the aggregate assessed valuations of such lands in any city, town, or village shall not be reduced below the aggregate assessed valuations thereof with the improvements thereon at the time of their acquisition by the authority, and provided further that in case of a general increase in assessments in any city, town, or village the assessed valuations of the lands and improvements at the time of their acquisition by the authority shall be deemed to have been increased proportionately with the increase of other real property in such tax district.

§ 2799-llll. Cemeteries. 1. For the purposes of this title, whenever 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 authority may acquire such lands or premises in the same manner as other real estate may be acquired pursuant to this title. 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 authority 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, shall, by order, direct that the authority may enter immediately on such lands and premises, and, after the provisions of subdivisions four, five, six, seven and eight of this section and sections three hundred four and four hundred four of the eminent domain procedure law have been complied with, may dedicate 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 pursuant to the provisions of this subdivision. 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 four, five, six, seven and eight of this section 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 out of 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 enclosed in a securely sealed postpaid envelope. The notice also shall be posted conspicuously in ten places in each city, town, or village in which the lands are located, at least twenty days before the time of making the application. If the notice is 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 by method other than in-person, under the eminent domain procedure law, the notice also shall be served on him or her, 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 shall also 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 applicable subsequent to the deposit of such moneys shall apply hereto, except that the general fund of the authority shall be liable for the payment of any deficiency judgment rendered pursuant to such section.

4. Once the authority has acquired title, or the right of immediate entry to real estate, the authority shall publish in two newspapers in the county where such burial place, cemetery 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 a period 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 authority therefor. From and after the period of sixty days from the last date of publication, the

authority shall advertise in 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.

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 authority may acquire such other lands as it deems necessary within the county or in an adjoining county where such burial place, cemetery or graves are now located for the purpose of properly reinterring such removed remains, which lands shall be acquired in the same manner as provided by this title for the acquisition of real estate, and title shall be taken in the name of the authority pursuant to the requirements of this title, 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 authority 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 enclosed, and in such manner as to permit 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 bodies removed by order of the authority shall, when distinguishable, be encased each in a separate box or coffin, and each monument, headstone, footstone, slab 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 authority, 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 authority 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 authority pursuant to this title. 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 authority 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 authority. The authority shall pay all expenses connected with such removal, out of the general fund of the authority in the same manner as other payments are made.

8. Whenever any lands are acquired by the authority for the purposes of reinterment of human remains, 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 authority of trustees elected pursuant to the provisions of the town law, or to a village or city, the authority 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 authority, 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 authority 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. 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 a period of fourteen years and not having an authority of trustees pursuant to the provisions of the town law, the authority shall by proper resolution, after completion and acceptance thereof, and final payment for all work as by this section provided, execute and deliver in the name of the authority, 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 at the time of 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, except, 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. Further, the authority, subject to the approval of the town authority, 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. On and after the date of the execution and delivery by the authority of the quitclaim deed or release, the authority shall be deemed to be divested of all rights and title to such lands transferred by the quitclaim deed or released and shall thereafter not be liable for the care, custody, maintenance and control thereof. This section shall not limit any existing rights of burial, or removal of remains under other provisions of law applicable thereto.

§ 2799-mmmmm. Procedure for construction of reservoirs, dams and other flood mitigation structures. 1. Preliminary plans, specifications, maps, statements and estimates are required as follows:

(a) If the authority shall determine as a part of an official plan or before the official plan has been prepared that the public interest or welfare requires that a reservoir, dam or other flood mitigation structure should be constructed for the regulation of the flow of a river or rivers, stream or streams of the Oswego river basin, or any other portion of such basin, it shall cause to be prepared preliminary plans and specifications of such reservoir, dam or other flood mitigation

structure 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 authority shall create a map showing all such lands, the number of acres in each separate tract, and the names of the owners and occupants thereof, so far as the authority can ascertain such information. Such maps shall also show the high flow lines of the proposed reservoir, dam or other flood mitigation structure, if applicable.

(c) The authority shall also prepare a statement of the amount of waterpower, 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, dam or other flood mitigation structure by the withdrawal of water for power purposes directly therefrom with an estimate of the value thereof. The authority shall also prepare a statement showing the public corporations and locality of lands to be benefited by such 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, dam or other flood mitigation structure shall belong to the state, the value thereof shall be determined in the applicable estimates, 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 authority shall have completed such preliminary plans, maps, specifications, estimates and statements, it shall vote by resolution on such preliminary plans, maps, specifications, estimates and statements. The authority shall file such preliminary plans, maps, specifications, estimates and statements so approved in the office of the county clerk of each county having lands within the Oswego river basin, and make them available on the website of the authority.

2. Upon the completion and filing of such preliminary plans, maps, specifications, estimates and statements pursuant to subdivision one of this section, the authority shall give notice of such filing and shall hold hearings thereon in the manner set by the authority that shall include at least two public hearings and offer at least one hundred twenty days of public comment.

3. Upon the completion of such hearings, the authority shall determine whether the public welfare requires that such proposed improvement should be proceeded with, and what, if any, modifications should be made in such plans, maps, specifications, estimates and statements. If the authority shall determine that such maps, plans, specifications, estimates and statements should be modified in any respect, it shall certify its proposed modifications. If the authority shall determine that the proposed reservoir, dam or other flood mitigation structure shall be made, it shall 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 the Oswego river basin are located, and made available on the website of the authority, and notice shall have been determined to be provided by publication of the making and filing of such final order.

4. Any person or public corporation affected by any determination of the authority 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, the plans, maps, specifications, statements and estimates shall be the established and final plans, maps, specifications, statements and estimates of such reservoir, dam or other flood mitigation structure. 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 authority shall cause such order to be filed and recorded in each place where the final order was filed and recorded, and made available on the website of the authority. No review of the final determination of the authority shall be had unless at the time of the application for review the person or public corporation seeking such 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, such person or public corporation will pay to the authority 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 authority 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 authority shall give notice and shall give a hearing thereon as previously held and the same proceedings shall be had as provided by subdivisions two, three and four of this section, and made available on the website of the authority.

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, dam or other flood mitigation structure, not including 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, dam or other flood mitigation structure shall be made under this title pursuant to any such final order until the legislature shall make an appropriation to pay the state's share of such expenses. The sum so appropriated shall be paid into the general fund of the authority for which it is appropriated.

7. When any such final order shall have been made, and the legislature shall have made an appropriation for any share of the expense payable by the state, if any, the authority shall proceed to the acquisition of such real estate as may be necessary for the construction, maintenance and operation of such reservoir, dam or other flood mitigation structure. When proceedings are taken under the eminent domain procedure law, the authority 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 from the general fund of the authority.

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 provided pursuant to this section, the authority may proceed to

construct the work according to the applicable plans and specifications. All such work shall be done pursuant to a contract or contracts which shall be awarded to the lowest responsible bidder, by sealed proposals publicly opened, after public advertisement and upon such terms and conditions as the authority shall require, provided, however, that the authority may reject any and all proposals and may advertise for new proposals, as herein provided, if in its opinion the best interests of the authority will thereby be promoted. Provided further, that at the request of the authority, all or any portion of such work, together with any engineering required by the authority in connection therewith, shall be performed by the chair and the chair's subordinates as agents for, and at the expense of, the authority. A sealed proposal may be accepted through an electronic platform established or used by the authority, provided that any sealed proposal received electronically shall be made public at the same time as any competing paper proposal, and provided further that the authority shall, at minimum, provide the same opportunity and time for submitting sealed proposals physically as for sealed proposals submitted electronically and shall provide the opportunity for bidders to submit sealed proposals physically any time that it provides the opportunity to submit sealed electronic proposals. In addition, the authority shall establish a process for accommodating force majeure events that prevent the submission of a sealed electronic proposal, including but not limited to internet and power outage events, and for automatically confirming receipt of any sealed electronic proposal received. All bidders shall be notified of the time and place of any such adjournment or rejection.

(b) Every proposal shall 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 authority for five per cent of the amount of the proposal. In the event the proposer to whom such contract shall be awarded shall fail or refuse to enter into such contract within the time fixed by the authority, such deposit shall be forfeited to the authority and paid into and become a part of the authority's general fund. In the event the contract be made such deposit shall be returned to the contractor.

(c) Before entering into any such contract, a bond with sufficient sureties approved by the authority shall be required, on the condition that the contractor shall perform all work within the time prescribed in and in accordance with the plans and specifications, and will pay to the state and the authority all damages, costs and expenses suffered or incurred by reason of the neglect or default of such contractor or such contractor's employees or any subcontractor or such subcontractor's employees in the performance of such contract or in doing such work thereunder.

(d) 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 percent of the contract price for the work actually done as shown by the certificate. Such certificate shall 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 percent of the estimate thus certified shall be retained until the contract is completed and approved by the engineer in charge of the work and by the authority.

(e) The authority may divide the work into several parts and award separate contracts therefor. If the estimated cost of any part of such work does not exceed one million dollars, the authority may by resol-

ution proceed to do such part of such work by its own forces or otherwise.

(f) The authority may, subject to coordination with and approval from the department of environmental conservation, dispose of merchantable timber and salable wood on state land. No reservoir, dam or other flood mitigation structure shall be constructed until procedures shall have been made by the authority for the clearing from the reservoir, dam or other flood mitigation structure site of all timber and all timber growth on lands to be flowed, which such timber and timber growth shall be removed by the authority by contract or otherwise. The authority shall not permit any stump higher than twelve inches above the bed of the reservoir, dam or other flood mitigation structure adjacent thereto to remain upon a reservoir, dam or other flood mitigation structure site above the low flow line of the reservoir, dam or other flood mitigation structure, if applicable.

(g) All merchantable timber and salable wood on state land to be flowed shall be sold by the authority in such manner as it shall deem best for the interests of the state and in coordination with and approved by the department of environmental conservation, but in no event for a sum less than its fair market value, provided, however, that the authority 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 authority, shall be paid into the general fund of the state. The authority, in coordination with and approved by the department of environmental conservation may designate the trees or kinds of trees to be considered merchantable timber or salable wood.

(h) In preparation of the reservoir, dam or other flood mitigation structure site, the authority shall do such work as may be necessary to prevent stagnant pools above the low flow line thereof.

§ 2799-nnnnn. Operation of reservoirs, dams or other flood mitigation structures. 1. The authority shall not permit the water in any reservoir, dam or other flood mitigation structure constructed, owned, operated, controlled or regulated under the provisions of this title 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 authority shall immediately open the outlet gates in such reservoir, dam or other flood mitigation structure and take such other actions as may be necessary to lower the water to the high flow line of such reservoir, dam or other flood mitigation structure with the least practicable delay. The authority shall keep an accurate and, so far as practicable, continuous record of the height of water in each reservoir, dam or other flood mitigation structure and shall install and maintain at suitable places such gauges or instruments as may be necessary therefor. Such continuous record shall be made available on the website of the authority.

2. Except for inspections or repairs which are necessary, no reservoir, dam or other flood mitigation structure 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, dam or other flood mitigation structure. It shall be unlawful for any officer or person in charge of any reservoir, dam or other flood mitigation structure to violate 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 reservoir, dam or other flood mitigation structure constructed, owned, operated, controlled or regulated pursuant to the provisions of this title without the consent of the authority, or for any person to interfere in any way with the operation of, or cause damage to, dam or other flood mitigation structure.

4. When the flow of a river used for the operation of a power plant falls below the average normal flow thereof, the natural flow of the river at a reservoir, dam or other flood mitigation structure thereon shall not be restricted without the consent of the owner of such power plant.

5. No reservoir, dam or other flood mitigation structure shall be constructed pursuant to the provisions of this title of a capacity greater than is required to maintain the average flow.

6. The expense of maintenance and operation of any existing reservoir, dam or other flood mitigation structure shall be paid pursuant to existing law until such reservoir, dam or other flood mitigation structure is taken over by the authority pursuant to the provisions of this title, and thereafter such expense shall be paid pursuant to the provisions of this title for the maintenance and operation of a reservoir, dam or other flood mitigation structure.

7. A holder of a license issued under the federal power act shall be exempted from the requirements of this section unless an agreement or contract has been made between such holder and the authority.

§ 2799-ooooo. Apportionment of cost. 1. The authority shall, as soon as practicable, prepare an estimate of the total cost of such reservoir, dam or other flood mitigation structure, or combination thereof, including interest on certificates of indebtedness issued prior to the date the local finance law took effect, 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 shall make a complete and verified statement thereof.

2. The authority 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, dam or other flood mitigation structure, or combination thereof. 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 amount representing the proportion thereof to be borne by each public corporation or parcel of real estate.

4. The authority, before making such apportionment, shall view the premises and public corporations benefited. Such apportionment shall be approved by the authority. Upon such approval by the authority, a copy thereof shall be served upon the chair 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 chair, mayor, or supervisor, then upon a member of the county legislative body of the county, a councilmember of the city or member of the governing authority thereof, a member of the town authority of the town, or a trustee of the village, and shall 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 authority of publication of a time and place where the authority 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 authority shall meet at the time and place specified pursuant to subdivision four of this section and shall hear all persons and public corporations interested in or aggrieved by such apportionment and may approve or modify the same. If such apportionment and determination is modified by the authority it shall not become effective until 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 to be aggrieved may, upon notice to the authority, review the determination of the authority in the same manner as a review of the determination of an authority 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, dam or other flood mitigation structure, or combination thereof, 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 be responsible for shall be based upon the proportion of cost as determined in such apportionment. If the total cost of such reservoir, dam or other flood mitigation structure shall exceed the estimate made and apportioned as provided pursuant to this title, 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 twenty-seven hundred ninety-nine-ppppp of this title. Such apportionment and determination, when made, shall also 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, dam or other flood mitigation structure, including the amount of a reasonable return to the state, if any, as provided for in this title.

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 authority, public corporations or owners of property liable for the same may execute and deliver to the authority 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 twenty-seven hundred ninety-nine-qqqqq of this title, and to have the same assessed against them or their property as provided for in this title. Such consent may also provide, as a condition of its acceptance by the authority, for the basis on which the assessment for the improvement shall be made upon the parties consenting.

8. The authority may accept or reject such consent. If it accepts such consent it shall, by resolution, provide 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 this title. If such consent be accepted by the authority, a certified copy thereof shall be filed by the authority 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 consent, when executed by a public corporation, shall be authorized by the governing body thereof.

§ 2799-ppppp. Assessments; how levied and collected. 1. After the apportionment of cost has been made and filed in accordance with the provisions of section twenty-seven hundred ninety-nine-ooooo of this title, the authority shall prepare a statement showing the name of each public corporation and a description of each parcel of real estate benefited by such reservoir, dam or other flood mitigation structure, or combination thereof, and the amount to be borne by each as determined in such apportionment. The authority shall also determine and state whether the amounts shall be paid in one lump sum or in annual installments, in such amounts as the authority shall annually determine to be necessary.

2. A copy of such statement duly verified under the seal of the authority 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 legislative body of such county, the common council of such city, the authority of trustees of such village, and the assessors of such county, 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 authority 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. 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 the owner of such individual real estate, a description of each parcel and what constitutes real estate as such term is defined in this title 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 piece of real estate 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. In the 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 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 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 state comptroller, who shall deposit such amount in depository banks to the credit of the several funds of such authority as herein provided. In the event 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 same manner provided for the collection of the principal of the assessment. In the case of default of 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 authority 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 this title 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 the provisions of this section may be paid directly to the authority, provided such 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 authority shall be forwarded by the authority to the state comptroller, who shall deposit such payments in depository banks to the credit of the several funds of such authority as herein provided. Upon receipt of any such direct payments, the authority shall notify the appropriate county treasurer to whom such payments would have been made under subdivision four of this section, had direct payment not been made to the authority. All moneys required to be collected and not paid directly to the authority 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 shall be paid to the state comptroller within thirty days of their receipt by such county treasurer. Otherwise, the county treasurer shall pay over the entire service fee collected to the state comptroller for deposit to the credit of the several funds of the authority in the same manner as moneys collected under the annual installments of the assessments provided for herein.

§ 2799-qqqqq. Operation and maintenance charges. 1. The authority shall make an estimate of an amount sufficient to pay the expense of the maintenance and operation of the works erected pursuant to this title, including interest on temporary certificates of indebtedness issued prior to the date the local finance law took effect. A reasonable return to the state upon the value of the rights and property of the state used shall mean six percent 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 eight of section twenty-seven hundred ninety-nine-nnnnn of this title. The value of the services of the state rendered shall be construed to mean the actual cost thereof.

2. Any amount so estimated pursuant to subdivision one of this section shall be the estimated amount required for such purposes each year, and when fixed and determined shall be the amount thereof for a period of three years. The amount shall be adjustable 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, dam or other flood mitigation structure, or combination thereof, as provided in this title to be levied, assessed and collected.

3. Such estimates and determinations as from time to time fixed and determined by the authority 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, dam or other flood mitigation structure, or combination thereof, 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.

§ 2799-rrrrr. 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 on such error if sufficient description is given to identify such real estate, and the owners thereof.

§ 2799-ssssss. Financing. 1. After the cost of any improvement made or to be made pursuant to this title has been apportioned among the public corporations and parcels of real estate benefited and after such apportionment has been assessed upon such public corporations and parcels of real estate, the authority may finance the cost of any such improvement in accordance with 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 on such bonds. 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 authority shall annually include in the installment of the assessment to be collected in such year a sum sufficient to provide for the payment of the principal of and interest on obligations issued for such purposes and maturing in such year.

3. The proceeds of the sale of obligations issued for the purposes of this title, together with all other revenues of the authority from other sources, shall be deposited in a national or state bank or banks or trust company or trust companies in Albany or within the Oswego river basin as are approved by the state comptroller, subject to the provisions of section 165.00 of the local finance law. Before any such deposit is made, the state comptroller shall require from any such bank or trust company security for repayment of the same to such authority or to the state comptroller upon demand for the money so deposited in the manner provided in section one hundred six of the state finance law. For purposes of this title, the "general fund" of the authority shall mean and consist of all moneys received by the authority under the provisions of this title, except from assessments levied to pay the cost of construction.

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 authority, over and above the requirements for the construction, maintenance and operation of the reservoir, dam or other flood mitigation structure, or combination thereof, including the amount raised for a reasonable return to the state, shall constitute a separate fund to be known as the "debt service fund", for the purposes of this title. The moneys in the debt service fund shall be applied to the payment of principal of and interest on obligations issued for the purposes of this title, 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 state comptroller into the general fund and applied to the payment of the cost of construction. The state comptroller shall be authorized and directed to pay from the debt service fund the principal of and interest on obligations issued for the purposes of this title.

5. All moneys in the debt service fund shall be applied by the state comptroller to the payment of the principal of and interest on such obligations except as otherwise stated in this section, 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 costs of maintenance, operation and other expenses.

6. The authority 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 investments 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 state comptroller. The authority may sell and dispose of any securities purchased for investment pursuant to this

section at any time with the consent of the state comptroller, and the proceeds thereof shall be paid to the state 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 state comptroller, who shall be the custodian thereof until the same are sold or otherwise disposed of. The state comptroller shall also collect the income of such investments and deposit such income in the general fund.

8. All payments from the general fund of the authority shall be made by requisition of and signed by the authority and audited and countersigned by the state comptroller.

9. The authority shall keep a complete record of its financial transactions, and shall be audited from time to time by the state comptroller as deemed necessary.

§ 2799-ttttt. Reports. 1. The authority shall, on January first of each year, submit to the governor, the temporary president of the senate and the speaker of the assembly a written report, which shall contain:

(a) a complete list of the personnel of the authority, and all of the employees and persons connected with the authority;

(b) a financial statement showing clearly and conspicuously the finances of the authority, the amounts and dates of maturity of all bonds, notes and certificates of indebtedness, the amounts of money received and from whom such money was received from, and the amounts of money paid and purposes for which same were paid;

(c) a descriptive statement of the work done during the previous year, including but not limited to work done to effectuate the Oswego river basin management plan, and other flood mitigation or emergency flood response work;

(d) a statement of any lands purchased by the authority during the previous year and a summary of total lands purchased by the authority for all previously reported years pursuant to section twenty-seven hundred ninety-nine-iiiii of this title. Additionally, the requirement of this paragraph shall include a statement of property identified by the authority that may be purchased in future years that would effectuate the purposes of section twenty-seven hundred ninety-nine-iiiii of this title;

(e) a statement of the condition of all reservoirs, dams and other flood mitigation structures, and the results secured by the operation thereof in each case;

(f) a statement of normal and flood flows, including all captured or compiled data, from the previous year and a statement of normal and flood flows of the previous years compared to normal and flood flows from all previously reported years;

(g) a statement of the work completed or ongoing as done by the committee; and

(h) a statement of any Oswego river basin intergovernmental councils formed or active, the work completed or ongoing as done by any such council and the status of any council formed during the previous year and during any previously reported years.

2. In addition to provisions of subdivision one of this section, the authority shall report to the governor, the temporary president of the senate and the speaker of the assembly such other matters as it shall deem necessary or that shall be required of the authority.

§ 2799-uuuuu. Hearings; hearing officers; determinations. Whenever the authority shall make a determination pursuant to the provisions of this title, it may hear testimony and take proofs which are material for

its inquiry 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 such officer's opinion as to the facts established thereby, to the authority. The authority 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 deemed satisfactory, and the expenses of taking such testimony or proofs shall be deemed to be a part of the expense of the improvement to which it relates.

§ 2799-vvvvv. Title not affected if in part unconstitutional or ineffective. If any term or provision of this title shall be declared unconstitutional or ineffective in whole or in part by a court of competent jurisdiction, then to the extent that it is not unconstitutional or ineffective such term or provision shall be enforced and effectuated, nor shall such determination be deemed to invalidate the remaining terms or provisions hereof.

§ 2799-wwwww. Actions against the authority. 1. In any action founded upon tort, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee, agent or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice. Except in an action for wrongful death, an action against the authority for damages for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued.

2. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

§ 2. Paragraph (b) of subdivision 11 of section 310 of the executive law, as amended by chapter 463 of the laws of 2011, is amended to read as follows:

(b) a "state authority," as defined in subdivision one of section two of the public authorities law, and the following:

Albany County Airport Authority;
Albany Port District Commission;
Alfred, Almond, Hornellsville Sewer Authority;
Battery Park City Authority;
Cayuga County Water and Sewer Authority;
(Nelson A. Rockefeller) Empire State Plaza Performing Arts Center Corporation;
Industrial Exhibit Authority;
Livingston County Water and Sewer Authority;
Long Island Power Authority;
Long Island Rail Road;
Long Island Market Authority;
Manhattan and Bronx Surface Transit Operating Authority;
Metro-North Commuter Railroad;
Metropolitan Suburban Bus Authority;
Metropolitan Transportation Authority;
Natural Heritage Trust;
New York City Transit Authority;
New York Convention Center Operating Corporation;
New York State Bridge Authority;

New York State Olympic Regional Development Authority;
New York State Thruway Authority;
Niagara Falls Public Water Authority;
Niagara Falls Water Board;
Oswego River Basin Authority;
Port of Oswego Authority;
Power Authority of the State of New York;
Roosevelt Island Operating Corporation;
Schenectady Metroplex Development Authority;
State Insurance Fund;
Staten Island Rapid Transit Operating Authority;
State University Construction Fund;
Syracuse Regional Airport Authority;
Triborough Bridge and Tunnel Authority.
Upper Mohawk valley regional water board.
Upper Mohawk valley regional water finance authority.
Upper Mohawk valley memorial auditorium authority.
Urban Development Corporation and its subsidiary corporations.

§ 3. The public authorities law is amended by adding a new section 1174 to read as follows:

§ 1174. Coordination with the Oswego river basin authority. Notwithstanding any provision of this title to the contrary, the authority shall be required to coordinate with the Oswego river basin authority, as established by title thirty-six of article eight of this chapter. Furthermore, the authority shall immediately, upon the request of the Oswego river basin authority, cede all duties and powers related to the effectuation of the general duties and powers enumerated in title thirty-six of article eight of this chapter to the Oswego river basin authority in order to mitigate flood events in the Oswego river basin, including but not limited to the control, operation, maintenance, and adjustment of water levels of all reservoirs, dams or other flood mitigation structures owned or operated by the authority. The authority shall regain all powers and duties ceded to the Oswego river basin authority at the end of a flood event, as determined by the Oswego river basin authority.

§ 4. The public authorities law is amended by adding a new section 1196-s to read as follows:

§ 1196-s. Coordination with the Oswego river basin authority. Notwithstanding any provision of this title to the contrary, an authority established and organized under this title shall be required to coordinate with the Oswego river basin authority, as established by title thirty-six of article eight of this chapter. Furthermore, an authority shall immediately, upon the request of the Oswego river basin authority, cede all duties and powers related to the effectuation of the general duties and powers enumerated in title thirty-six of article eight of this chapter to the Oswego river basin authority in order to mitigate flood events in the Oswego river basin, including but not limited to the control, operation, maintenance, and adjustment of water levels of all reservoirs, dams or other flood mitigation structures owned or operated by an authority. Such authority shall regain all powers and duties ceded to the Oswego river basin authority at the end of a flood event, as determined by the Oswego river basin authority.

§ 5. This act shall take effect immediately; provided, however, that the amendments to paragraph (b) of subdivision 11 of section 310 of the executive law made by section two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.