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

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

a. The name and residence of the petitioner or petitioners.

b. A map or description showing the approximate location and area of the property which is to be drained.

c. A map or description which will show the location of such drain, ditches, dikes and basins and the area of the lands and properties to be occupied thereby.

d. The names and places of residence of the owners of the property to be so occupied; if an infant, the name and place of residence of the person with whom he resides; if a person adjudged incompetent by reason of mental illness or other cause, the name and place of residence of his committee or trustee, if he has one, otherwise, the name and place of residence of the person with whom he resides; if a conservatee, the name and place of residence of his conservator, if he has one, otherwise the name and place of residence of the person with whom he resides; if a non-resident, having an agent or attorney residing in the state, authorized to contract for the sale of the property, the name and place of residence of such agent or attorney. If the name or place of residence of any owner cannot after diligent inquiry be ascertained, it

may be so stated with a specific statement of the extent of the inquiry which has been made.

e. A statement that the petitioner has been unable to agree with the owner or owners of the property for the damages to be paid for such occupation.

f. A statement that it is the intention of the petitioner, in good faith, to complete such drains, ditches, dikes and basins, for which purpose the property is so occupied.

g. A request that the department determine the necessity for such drainage and for occupying such lands and property and ascertain the compensation to be made to the owner or owners and that the petitioner be permitted, upon making such compensation, to construct, reconstruct, enlarge or clean such watercourses or drains, ditches, dikes and basins, and maintain the same across the lands specified.

2. In addition, the petition shall be accompanied by an undertaking, satisfactory to the department as to amount and sureties, that applicants will pay the expenses of the proceedings and determination as hereinafter provided.

3. A person who seeks to acquire an easement or right, to effect the purpose set forth in subdivision above, pursuant to the provisions of the eminent domain procedure law, and who is unable to provide a specific description of the property to be acquired and its location by metes and bounds, with reasonable certainty, may prior to the presentation of a petition to a special term of the Supreme Court, apply for an order permitting such person to enter upon the property sought to be acquired, for the purpose of viewing, surveying, measuring and otherwise examining such property, in order to describe such property in the petition. Application for such an order shall be made to a special term of the Supreme Court, held in the judicial district in which the property is located. The court shall if the facts so warrant, grant the application upon such terms and conditions as it may deem advisable. The court may also require the applicant to post bond to indemnify the owner

of the property for any damage caused in the making of the survey.

4. Upon receipt of such petition, the department shall take such steps as it shall deem proper to ascertain if the relief sought can be accomplished in the manner described in such petition and other facts pertinent to the case and to this end may make such surveys or other investigations as may be in its judgment necessary in the premises.

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

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

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

c. Depositing a copy and notice in the post office properly inclosed in an envelope addressed to the owner, guardian, committee, trustee, agent or attorney, respectively, at his post office address, and paying the postage thereon shall be deemed proper service. Notice of such

hearing may be given by publishing the same once a week for two successive weeks, immediately prior thereto in two newspapers in the county or counties in which the lands and properties affected are located, provided personal service cannot be made. Such service shall be made at least fifteen days prior to the date of the hearing.

6. Assessment of damages shall be as follows:

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

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

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

7. Review shall be as follows:

a. If the petitioner or petitioners feel aggrieved by the decision of the department, he or they may review the same as provided in section 15-0905. Unless such proceeding for review shall have been instituted

within sixty days after filing of the decision in the county clerk's office, the decision of the department shall be deemed final. If the final decision shall be adverse to the applicant, no other application to the department for the construction of the same works shall be made within one year.

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

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