§ 15-2119. Procedure for construction of reservoirs.

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

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

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

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

d. In the event that any of the real estate required for such reservoir shall belong to the state, the value thereof shall be determined in the estimates, as hereinbefore provided, and in the event

that such land is outside the forest preserve and the state is chargeable with any proportion of the expenses, such value shall be deducted from the amount to be paid by it, and shall be chargeable as a part of the expenses of the improvement.

e. When the board shall have completed such preliminary plans, maps, specifications, estimates and statements, it shall certify the same with its approval thereof to the department, which shall have power after hearing the board, to modify such maps, plans, specifications, estimates and statements, or any of them, and within forty days after the receipt thereof shall approve the same as certified to or modified by it, and shall certify the same as approved by it to the board. The board shall thereupon cause the preliminary plans, maps, specifications, estimates and statements so approved to be filed in the office of the county clerk of each county having lands within such district, and in the office of the department.

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

3. Upon the completion of such hearing the board shall determine whether the public welfare requires that such proposed improvement should be proceeded with, and what, if any, modification should be made in such plans, maps, specifications, estimates and statements. If the board shall determine that such maps and plans, specifications, estimates and statements should be modified in any respect, it shall certify its proposed modifications to the department, which after hearing, the board shall determine what, if any, modifications should be made therein, and as modified by them shall approve the same and certify the same with their approval to the board, which modified plans, maps, specifications, statements and estimates shall be filed by it as hereinbefore provided for the filing of the original thereof. If the board shall finally determine that the proposed reservoir shall be made, it shall thereupon make a final order directing the same to be made, and

shall cause such final order or certified copies thereof to be filed and recorded in the office of the county clerk of each county in which any lands within such district are located, and in the office of the department, and forthwith give notice by publication of the making and filing of such final order.

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

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

6. In the event that in any such plans, estimates and statements, a charge is made against the state for any share of the expenses of the proposed reservoir, not including therein such preliminary expenses as

may have been necessary or expenses consisting only of assessments against the state on account of benefits from the improvement, no such reservoir shall be made under title 21 of this article pursuant to any such final order until the Legislature shall make appropriation to pay the state's share of such expenses. The sum so appropriated shall be paid into the general fund of the river regulating district for which it is appropriated.

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

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

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

b. The advertisement shall be limited to a brief description of the work proposed to be let with an announcement stating where the maps, plans and specifications are on exhibition and the terms and conditions on which bids will be received and such other matters as may be necessary to carry out the provisions of title 21 of this article. In such notice the board shall reserve the right to reject any or all bids and again advertise for further bids.

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

d. Before entering into any such contract a bond with sufficient sureties to be approved by the board shall be required, conditioned that the contractor will perform all work within the time prescribed in and in accordance with the plans and specifications, and will pay to the state, the regulating district and the board all damages, costs and expenses suffered or incurred by any or all of them by reason of the neglect or default of such contractor or his employees or any subcontractor or his employees in the performance of such contract or in doing such work thereunder.

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

must be retained until the contract is completed and approved by the engineer in charge of the work and by the department.

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

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

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

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