§ 15-2121. Apportionment of cost.

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

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

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

4. The board, or a majority of the members thereof, before making such apportionment shall view the premises and public corporations benefited. Such apportionment shall be approved by the board and certified to the department for its approval. Upon the approval thereof by the department, the board shall cause a copy thereof to be served upon the

chairman or other presiding officer of the county legislative body of each county, the mayor of each city, the supervisor of each town, and the mayor of each village, named in the apportionment, or if service cannot be had upon such chairman, mayor, or supervisor, then upon a member of the county legislative body of the county, an alderman of the city or member of the governing board thereof, a member of the town board of the town, or a trustee of the village, and to be filed in the office of the county clerk of each county in which any public corporation or real property thereby affected is located. After such service and filing of such apportionment and determination, notice shall be given by the board, of publication of a time and place where the board will meet to hear any public corporation or person aggrieved by the same. The affidavit of the person serving or publishing such notice shall be evidence of such service or publication.

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

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

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

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

8. The board may accept or reject such consent. If it accepts the same it must be by resolution providing for the levy of the entire assessment upon the public corporations and property of the parties filing such consent, on the basis of benefits received, if any, determined by the terms of the consent, or if no basis of assessment be fixed by the consent, on the basis of the benefits shared by such parties in the manner provided in title 21 of this article. If such consent be accepted by the board, a certified copy thereof shall be filed by the board in

the office of the county clerk of each county in which any public corporation or real property affected by the assessment is located. Such a consent, when executed by a public corporation, must be authorized by the governing body thereof.