§ 16-0107. Acquirement of property for flood control.

1. The commissioner of environmental conservation, for the people of the state of New York, shall acquire any property or interest therein, necessary for purposes connected with the flood control projects. Such property or interest therein shall be for rights-of-way, channel improvements, reservoirs, dams, quarries, gravel pits, borrow pits, spoil banks, camp sites, relocation of buildings and facilities, relocation of the facilities of public service utilities, relocation of streets, sidewalks, public grounds, parks, cemeteries, water supply systems, sewer systems and lighting systems of municipal corporations; relocation of county roads and town highways; and for other purposes connected with the flood control projects. The term "property" as used in this section shall be deemed to mean and include "real property" as such term is defined in section one hundred three of the eminent domain procedure law. The manner of acquisition, including method of obtaining possession, shall be governed by the provisions of the eminent domain procedure law.

2. The commissioner of environmental conservation shall cause to be prepared an accurate acquisition map of any property which he may deem necessary for purposes connected with the flood control projects or of any property in and to which he may deem the acquisition or exercise of an easement, interest or right to be necessary for such purposes, indicating and describing in each case the particular easement, interest or right. On the approval of such map by the commissioner he shall acquire such property, easements, interests or rights pursuant to the provisions of the eminent domain procedure law.

3. If the commissioner shall determine, prior to the filing of such copy of the acquisition map in the office of the county clerk, that changes, alterations or modifications of such map should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation of an amended map, either by preparing a new map or by making changes on the original tracing of such map, with a notation indicating such changes. On the approval of such amended map by the commissioner, it shall be

filed in the main office of the department in the same manner as the original map was filed and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

4. If the commissioner shall determine, prior to the filing of such copy of the map in the office of the county clerk as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she shall file a certificate of withdrawal in the offices of the department and department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

5. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

6. If, at or after the vesting of title to such property in the people of the state of New York in the manner provided for in this section, the commissioner shall deem it necessary to cause the removal of an owner or other occupant from such property, he may cause such owner or other occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain procedure law. The proceedings shall be brought in the name of the commissioner as agent of the state. If any person proceeded against shall contest the petition by an answer, the attorney general shall be notified, and he thereafter shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner but they shall be part of the costs of the acquisition and be paid in like manner. Proceedings may be brought separately against one or more of the owners or other occupants of a property, or one proceeding may be brought against all or several of the owners or other occupants of any or all property within the territorial jurisdiction of the same justice or judge; and judgment

shall be granted for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

7. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner of environmental conservation shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of his or their property and the amount so fixed shall be paid out of the state treasury from moneys appropriated for purposes connected with the flood control projects, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

8. Application for reimbursement as provided in section seven hundred two of the eminent domain procedure law, shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from monies appropriated for the acquisition of property under this section.

9. a. The commissioner with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of the following expenses and losses incurred by the displaced owners or occupants of a property acquired pursuant to this section as a result of such acquisition:

(1) actual reasonable and necessary moving expenses; and

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation on such property, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and

(3) actual reasonable and necessary expenses in searching for a replacement to the business or farm operation on such property; and

(4) actual and reasonable expenses necessary to reestablish a displaced farm operation, non-profit organization, or small business from such property at its new site but not to exceed the maximum amount provided for in the regulations.

b. Such regulations may provide in hardship cases for the advance payment of any such expenses and losses. For the purposes of making payment of such expenses and losses only, such regulations shall provide that the term "business" includes any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. Such regulations may also provide for payments to utilities for the relocation of their facilities under such circumstances and in such amounts as the commissioner may determine.

c. Any person eligible for the payments authorized by paragraph a of this subdivision, who is displaced from their residential property may, in lieu of such payments, elect to accept an expense and dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations.

d. Any person eligible for the payments authorized by paragraph a of this subdivision, who is displaced from their business or farm operation and who is eligible under criteria established by the department may, in lieu of such payments, elect to accept a fixed relocation payment, except that such payment shall be not less than the minimum nor more than the maximum amount provided for in the regulations. However, a person whose sole business at the property so acquired is the rental of such property to others shall not qualify for payment under this paragraph.

e. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by the commissioner and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. No payment shall be made under this subdivision for any cost, expense, difference or other amount for which payment was previously made.

f. The regulations necessary to implement this subdivision shall be consistent with the applicable provisions of section thirty of the highway law, as the same may from time to time be amended, and regulations issued thereunder.

10. The commissioner pursuant to section three hundred five of the eminent domain procedure law, may make agreements on such terms, conditions and consideration as he deems beneficial to the state with respect to any property heretofore or hereafter acquired, whereby such property may be used and occupied by the former owner, tenant or by any other party from a date specified in said agreement, until such time as the state requires and obtains actual physical possession. The agreements for the use and occupancy of such property may be managed, supervised and enforced (1) by the staff, forces and equipment of the department of environmental conservation; or (2) by the commissioner of environmental conservation contracting for the management, supervision and enforcement thereof with any person, firm or corporation; or (3) by a combination of such methods.

The use and occupancy of such property under the provisions of this section and the right of the state or its duly authorized agent to recover possession thereof shall not be subject to the emergency housing rent control law.

Expenses which are determined by the commissioner to have been incurred in connection with the use and occupancy of such property may

be paid out of the state treasury after audit by the comptroller from moneys appropriated for the duly authorized project for which the property was acquired. However, such expenses incurred under a contract for management and supervision of such property may be paid out of the gross revenue therefrom. All moneys received by the commissioner for such use or occupancy shall be paid into the treasury of the state to the credit of the capital construction fund.

11. a. Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by the commissioner. The commissioner with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision.

b. In the case of residential property acquired pursuant to this section, which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such supplemental relocation payment to such owner shall not exceed the maximum amount provided for in the regulations. Such payment shall include the following elements:

(1) the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner, required to obtain a comparable replacement dwelling for such displaced owner, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling; and

(2) the amount which will compensate such displaced owner for any increased interest costs required to pay for financing the acquisition of the comparable replacement dwelling. Such amount shall be paid only if the dwelling on the property acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such property. Any such compensating interest payment made pursuant to this provision

shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section; and

(3) an amount which will compensate such displaced owner for reasonable expenses incurred for evidence of title, recording fees and other closing costs incident to the purchase of the comparable replacement dwelling, but not including prepaid expenses.

c. Any supplemental relocation payment made pursuant to paragraph b of this subdivision shall be made only to a displaced owner who purchases and occupies a comparable replacement dwelling within one year subsequent to the date on which such owner is required to move from the dwelling on the property acquired pursuant to this section or the date on which such owner receives from the state final payment for such acquired dwelling, whichever occurs later. The commissioner may extend such period for good cause; provided however, that any payment shall be based on the costs of relocating the displaced person to a comparable replacement dwelling within one year of such extended date. The regulations may provide that advance payment of such payments may be made in hardship cases.

d. In the case of residential property acquired pursuant to this section from which an owner or tenant, not otherwise eligible to receive a supplemental relocation payment pursuant to the provisions of paragraph b of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such owner or tenant for not less than ninety days immediately prior to (1) the initiation of negotiations for the acquisition of such property or (2) such other event as regulations may prescribe when the displacement is not a direct result of such acquisition, such supplemental relocation payment to such owner or tenant shall not exceed the maximum amount provided for in the regulations. Such payment shall be the amount which is necessary to enable such owner or tenant to lease or rent for a period not to exceed the maximum time specified in the regulations, a comparable replacement dwelling but such amount shall not exceed the maximum amount specified in the regulations. Such payments may be made in periodic installments as determined by the commissioner. Any person eligible for a

supplemental relocation payment under this paragraph may elect to use such payment for the down payment, including reasonable incidental expenses incurred by such person on the purchase of, a comparable replacement dwelling, except such payment shall not exceed the maximum amount provided for in the regulations.

e. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by the commissioner and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. No payment shall be made under this subdivision for any cost, expense, difference or other amount for which payment was previously made.

f. The regulations necessary to implement this subdivision shall be consistent with the applicable requirements of section thirty of the highway law, as the same may from time to time be amended, and regulations issued thereunder.

12. Any owner may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law, a claim for the value of such property appropriated and for legal damages, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury from moneys appropriated for purposes connected with the flood control projects.

13. Permits for use of flood control lands. No person shall construct any improvement, excavate, deposit material or operate a motorcycle, motor-driven cycle, snowmobile or motor vehicle except lawn maintenance equipment upon lands acquired or burdened by a flood control easement pursuant hereto without a permit. Permits will be issued by the commissioner where the proposed activity will not interfere with or

endanger the flood control works, or impede the maintenance or operation of such works. The commissioner may adopt such rules and regulations as he may deem necessary to protect flood control works from damage which may interfere with their proper and safe operation, or impede their maintenance. Failure to comply with the provisions of this section or with rules and regulations promulgated pursuant hereto shall be a violation.

14. The commissioner notwithstanding any other provisions of this act or any other law, may acquire by grant or purchase any property which he deems necessary, in order to carry out the projects herein authorized.

Payment therefor, if any, shall be made in the manner prescribed in this section for the payment of adjusted claims, provided, however, that no interest in real property shall be so acquired unless the title thereto shall be approved by the attorney general.

15. The expense of such acquisitions including the cost of making surveys, and preparing maps of property to be acquired, serving notices, making appraisals and agreements and of searches ordered and examinations and readings of title made by the attorney general, and expenses incurred by the commissioner or attorney general in proceedings for removal of owners and occupants, shall be deemed part of the cost of such flood control projects.

16. Notwithstanding the provisions of any general, special or local law, the commissioner, his officers or agents, and the officers, agents or contractor of the United States when engaged on flood control projects, may enter upon property for the purposes of making surveys, test pits, test borings, or other investigations and also for the purposes of temporary occupancy during construction. Any claim for damage caused by such work or on account of such temporary occupancy, not exceeding five thousand dollars, may be adjusted by agreement by the commissioner without acquiring such property. Upon making any such adjustment and agreement the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner for damage caused by such work, or on account of such temporary

occupancy, and the amount so fixed shall be paid out of the state treasury from moneys appropriated for purposes connected with the flood control projects.

17. The commissioner (a) May determine whether any property taken for any of the purposes connected with flood control projects pursuant to this section may be leased, sold or exchanged on terms beneficial to the state, and in all cases of such determination subject to compliance with section four hundred six of the eminent domain procedure law, he may, lease, sell or exchange such property; in order to carry any such lease, sale or exchange into effect, the commissioner is hereby authorized to execute and deliver, in the name of the people of the state, a quit claim or lease of such property.

(b) May also convey to the United States for flood control purposes all right, title and interest of the state in and to any property heretofore or hereafter so taken for any of such purposes for which reimbursement by the United States is made in accordance with section two of the federal flood control act of nineteen hundred thirty-eight being public law, numbered seven hundred and sixty-one, seventy-fifth congress, and including improvements made thereon for such purposes. Such conveyance shall be by deed or instrument of quit claim, executed by the commissioner in the name of the people of the state, delivered to the federal authority having jurisdiction. This paragraph shall not prevent reservations, if any, in such a conveyance, agreed to by such commissioner and federal authority, to protect leases or easement, if any, theretofore lawfully made or created by such commissioner. Whenever the United States, acting by and through said federal authority having jurisdiction, shall cause to be filed in the office of the secretary of state of this state, a duplicate original of the deed or instrument of conveyance to the United States of any such property for the purposes herein specified, such jurisdiction as may be required for flood control purposes is thereupon ceded to the United States over the property described in said deed or instrument of conveyance, during the time that the United States shall be or remain the owner thereof and shall use such property for flood control purposes.

(c) Is hereby authorized to agree with the United States as to the value of the property appropriated and for legal damages caused by any

such appropriation thereof, as and for reimbursement by the United States, and the commissioner is authorized to convey such property to the United States, in the manner herein provided, specifying in such conveyance that the consideration stated therein is the agreed value of such property and legal damages, and is in full reimbursement thereof by the United States.

18. The attorney general is hereby authorized and empowered to certify to the United States of America or a department, agency or authority thereof having jurisdiction therein, the right, title or interest vested in the people of the state of New York in and to property acquired for the purpose of this act for which reimbursement is to be made by the United States of America to the people of the state of New York.

19. If the commissioner shall determine subsequent to the acquisition of a temporary easement right in property and subsequent to the filing of a description and map of such property in the office of the county clerk, as aforesaid, that the purposes for which such easement right was acquired have been accomplished and that the use and occupancy of said property for flood control purposes are no longer necessary, and that, therefore, the term of such easement should be further limited, or if the appropriation of such easement was for an indefinite period, that such period should be fixed and determined, or that the period of such easement has by its terms expired, the commissioner shall make a certificate that the use and occupancy of such property for flood control purposes are no longer necessary, that the property in which such easement right was acquired is surrendered back to the affected owner of said property and that such easement right is thereupon terminated, released and extinguished. The commissioner shall cause a copy of such certificate to be filed in the main office of the department. Upon the filing of such certificate in the office of the department all rights acquired by the state in such property shall cease and determine. The commissioner shall cause a copy of such certificate together with notice of the filing thereof in the main office of the department to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such

owner is known or can be ascertained by a reasonable effort. A further copy of such certificate and notice of filing shall be filed in the office of the recording officer of each county wherein the property affected is situated. On the filing of such certificate and notice with such officer it shall be the duty of such officer to record same in the books used for recording deeds in the office of such officer.