

CHAPTER 192/1925

Section 1. There is hereby created and established a district to be known as the "Albany Port District" which shall embrace all the territory on the easterly and westerly sides of the Hudson river which on January first, nineteen hundred and twenty-nine, was included within the city of Albany and the city of Rensselaer; and all lands and water, in the Hudson river contiguous thereto, subject to the right, title and interest of the state in and to the lands under the waters of the Hudson river. Such district is hereby declared to be a public corporation and shall have perpetual existence and the power to acquire such real estate and other property as may be necessary, to sue and be sued, to incur debts and liabilities, to have a seal, to exercise the right of eminent domain, and to do all acts and exercise all powers authorized by and subject to the provisions of this act, but subject also to the constitution and laws of the United States. Such powers shall be exercised by and in the name of the Albany port district commission.

§ 2. There is also hereby created and established the Albany port district commission, hereinafter called "the commission", which shall be a body corporate and have the powers, duties and jurisdiction hereinafter enumerated, and such other additional powers and duties as may from time to time be conferred upon it by the legislature of the state. The commission shall consist of five members, four of whom shall be residents of the city of Albany, and one of whom shall be a resident of the city of Rensselaer. Four of the members of said commission shall be appointed by the governor upon the nomination of the mayor of the city of Albany; one member shall be likewise appointed upon the nomination of the mayor of the city of Rensselaer. In the event that the governor shall disapprove any nomination so made the governor shall return said nomination to the mayor making the same and such mayor shall thereupon nominate another person in his or her place and stead for membership on such commission. In the event a mayor shall within twenty days after the receipt of such disapproved nomination fail to nominate

another person in his or her place and stead, the governor shall appoint as a member of such commission a resident of the city in which the person originally nominated resides at the time of such original nomination. The terms of office of the members of the commission shall be three years from the date of their appointment. A vacancy in the commission arising by reason of death, resignation, or otherwise, shall be filled for the balance of the unexpired term in the same manner as the original appointment was made. The members of the commission shall, before entering upon the duties of their office, take the constitutional oath of office, and file the same in the office of the secretary of state. The commission shall organize by the selection from its members of a chairman, and the appointment of a secretary and treasurer. It shall adopt such rules as it may deem necessary and proper for the government of its own proceedings and the regulation and use of port facilities in the district, and shall keep a record of its proceedings. A majority of the members of such commission shall constitute a quorum for the transaction of business and the concurrence of a majority of such commission shall be necessary to the validity of any order of the commission, except as otherwise provided by the local finance law. Any member of the commission may be removed by the governor for inefficiency, neglect of duty or misconduct in office, after a hearing upon charges and an opportunity to be heard in his or her own defense in person or by counsel upon not less than ten days' notice. The chairman and members of the commission shall not receive a salary or other compensation, but the chairman and each member shall be reimbursed for his or her actual and necessary disbursements incurred in the discharge of his or her duties.

§ 3. The treasurer of such commission shall, before entering upon the discharge of his duties, execute and file in the office of the commission his bond or undertaking in the penal sum of twenty-five thousand dollars, conditioned for the faithful performance of his duties and the lawful application of all moneys which may come into his hands as such treasurer. He shall keep a full and accurate account of all moneys received and paid out by the commission and such account shall at all times be open to inspection. The treasurer, shall, in the month of

July each year, make and file with the clerk of each such municipality, a detailed verified report of all receipts and disbursements for the preceding fiscal year.

§ 3-a. The comptroller of the state of New York shall, from time to time but not less than once in every five years examine the books and accounts of such commission, including the receipts, disbursements, contracts, leases, sinking funds, investment and any other matters relating to its financial standing. In lieu of such an examination, the state comptroller is hereby authorized to accept from such commission an external examination of its books and accounts made at its request.

§ 4. Such commission shall have power and authority over the survey, development, control and operation of port facilities and such facilities, operations or things as may be incidental or appurtenant thereto, within such port district, and the co-ordination of the same with existing or future agencies of transportation, with a view to the increase and efficiency of all such facilities and the furtherance of commerce and industries in the district; but nothing contained in this section shall be held to prevent any railroad corporation from building and developing its own facilities and road upon its own property in the district at its own expense. All such construction by a railroad corporation, however, shall conform to the general comprehensive plan of the commission, for port development. It shall make a thorough investigation of port conditions in the district and such other places as it may deem proper and shall prepare a comprehensive plan for the development of port facilities in such district. It shall be provided with an office which shall be located by such commission within the port district and it shall have power to equip the same with suitable furniture and supplies for the performance of the work of the commission. It shall (1) make an annual report of its proceedings and deliver a copy of the same to the state superintendent of public works, the state engineer and surveyor, the mayor, and the common council of each municipality within the port district, the resident United States army engineer, the chief of engineers of the United States army and the

secretary of commerce of the United States;

(2) submit to the governor, the chairman of the senate finance committee, the chairman of the assembly ways and means committee and the state comptroller, within ninety days after the end of its fiscal year a complete and detailed report setting forth: (1) its operations, accomplishments and plans; (2) its receipts and expenditures during such fiscal year and its estimated receipts and expenditures for the current fiscal year in accordance with the categories or classifications established by the commission for its own operating and capital outlay purposes; (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds; and (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year;

(3) submit to the governor, the chairman of the senate finance committee, the chairman of the assembly ways and means committee and the state comptroller within thirty days after receipt thereof by the commission, a copy of the report of every external examination of its books and accounts other than copies of the reports of such examinations made by the state comptroller.

§ 5. Such port commission also shall (1) Have power to confer with the governing bodies of each of the municipalities within the port district and dock, port, harbor, channel and improvement commission and any other body or official having to do with port and harbor facilities within and without the district and hold public hearings as to such facilities;

(2) Have power to confer with the railroad, steamship, warehouse and other officials in the district with reference to the development of transportation facilities in such district and the co-ordination of the same;

(3) Confer with the proper state officials as to means and measures for stimulating the use of the barge canal;

(4) Formulate and adopt a financial, building and operation program, which shall be submitted to the mayor of each city, in the district, who shall be entitled to be heard thereon before formal adoption, notice of such hearing to be given in writing at least twenty days before the day

of such hearing;

(5) Have power to adopt a comprehensive plan, and to change or revise the same, for the development of port facilities in such district, which plan may provide separately for the work of initial development, and shall include an estimate of the total cost of all the work and/or of the work included in such initial development, and to apportion the cost thereof, as provided in section eight, and not oftener than once in three years to revise such apportionment to accord with any changes theretofore made in the comprehensive plan, as required by said section eight; and as part of such comprehensive plan, or pursuant thereto, to determine upon the location, type, size and construction of requisite port facilities, subject, however, to the approval of the secretary of war and chief of engineers, United States Army, where federal statute or regulation requires it;

(6) Have power to acquire, lease, erect, construct, make, equip and maintain port facilities within or outside the district, either on land owned by the district or upon land set aside for its uses and control, as provided in section thirteen, and for any such purpose to acquire and improve real property, including easements therein, lands under water and riparian rights, by agreement or by condemnation, and to sell, rent, exchange or dispose of any property, real or personal, as may seem advisable;

(7) Have power to contract with any municipality in the district for the construction by the municipality of one or more docks, wharves, terminals or warehouses, to belong to the municipality and be maintained by it, whereby a part of the cost of construction shall be borne by the district, in cases where the commission, after a public hearing, determines that such work is of common benefit to the municipalities, inhabitants and property in the district;

(8) Have power to execute contracts within the provisions and limitations of this act;

(9) Have power to fix rates, charges and wharfage for the use of all port facilities, or to rent the same or grant the use thereof for limited periods, and collect rates, rents, charges and wharfage for such facilities owned or controlled by the district;

(10) Operate and maintain all port facilities owned or controlled by it, including a general terminal railroad connecting with any railroad

within said district, use the revenues therefrom for the upkeep thereof and the expenses of the commission and the residue, if any, on hand at the end of any fiscal year, for further construction and port development, or in reduction of taxation;

(11) Have power to regulate and supervise the construction and operation of all port facilities, by whomsoever constructed, installed or owned;

(12) Expend moneys, if any, appropriated by the state for the purposes of this act on account of benefits accruing thereunder to the state or its property;

(13) Have power to create and maintain a traffic bureau;

(14) Have power to employ such clerical, engineering, legal or other professional assistants as it may deem necessary for the purposes of this act, fix their compensation and at pleasure discharge any of them;

(15) Have power to do all things necessary to make the deeper Hudson project useful and productive.

The terms "facilities," "port facilities," "terminals," and "terminal work" as used in this act, shall include, among other things, wharves, docks, piers, terminals, railroad tracks on terminals, cold storage and refrigerating plants, warehouses, elevators, and such facilities, operations or things as may be incidental or appurtenant thereto, and such property real or personal as may be acquired or used in connection therewith, personal service, freight handling machinery and such equipment as is used in the handling of freight and the establishment and operation of a port, and the appurtenances thereto, and work of deepening parts of the Hudson river adjacent to the terminal, exclusive of the channel, within the port district.

§ 6. The commission may make, and cause to be served upon any municipal or other corporation, or individual, within the district, any reasonable order which it may determine to be necessary for the proper development, maintenance and use of the port, relating to the construction, equipment, repair, maintenance, use and rental of any dock, wharf, slip, terminal or warehouse owned or leased by such corporation or individual within the district. With a copy of the order

shall be served a notice specifying a day, not less than ten days after such service, when such corporation may appear before the commission, present written objections to the making of the order and be heard on such objections. If no such objections be filed within the time stated, or if the order be sustained as the result of such hearing, either in its original or a modified form, such order shall be final, subject only to review by a court of competent jurisdiction; but no order staying or suspending an order of the commission shall be made by any court otherwise than upon notice and after a hearing; and if the order of the commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto that great and irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. When an order of the commission shall become final, including the termination of any court proceeding sustaining the order, or of the time for beginning such a proceeding if none be brought, if the corporation or individual shall fail to obey it, or if any municipal or other corporation or individual shall violate a lawful rule of the commission, the commission may commence and maintain an action or proceeding in the name of the Albany port district, in an appropriate court having jurisdiction, for the purpose of having such disobedience to an order or violation of a rule prevented or obedience enforced, either by mandamus or injunction. Such an action or proceeding may be brought in the supreme court, which shall have jurisdiction to grant mandamus or injunction or any other relief appropriate to the case.

§ 7. The commission, and any member thereof when directed by the commission, may make any investigation which the commission may deem necessary to enable it effectually to carry out the provisions of this act, and for that purpose the commission, or such member, may take and hear proofs and testimony and compel the attendance of witnesses and the production of books, papers, records and documents, including public records. The commission 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 act, the district being liable for actual damage done.

§ 8. In the preparation of its comprehensive plan of port development provided for in this act, the commission shall incorporate existing facilities as an integral part thereof, so far as practicable. If the commission shall determine as part of such plan that the district shall construct any port facilities or contribute to the cost of such facilities to be constructed by any municipality, the plan shall contain specifications of all such work, estimates of the cost of each and an estimate of the total cost, including the cost of acquiring necessary real property; and the total cost of such work, and amount of such contributions shall be borne by all the municipalities in the district, except as hereinafter provided. The commission also shall make a tentative determination and shall annex to and file with such specifications and estimates a statement showing the proportion of benefit to each municipality in the district from such improvements, regard being had to the special benefit to the municipality in which any district part of such work is to be done, and from the estimated annual average expenditures of the commission, other than for construction work, for a period of three years. Such proportions shall be expressed in decimals. The development of such port shall be deemed and is hereby declared to be a public, municipal purpose of each city, in the district, to the extent of the local benefits accruing and to accrue therefrom. Such decimal, with respect to any municipality, shall represent the proportion of the total cost to be borne by it, and shall be the proportion of the total amount to be raised annually by tax on the taxable property in the municipality of the portion of such cost to be provided annually, of the annual expenses of the commission other than for construction work and contributions to municipal construction, and of any installment of principal and interest of any obligation of the district next to become due. At the end of each three year period, new estimates shall be made of the expenses of the commission, other than for construction work and such contributions, for the ensuing three years, and, if necessary, such apportionment shall be revised. It may also be revised if there be subsequent construction work, not contemplated by the original comprehensive plan, by which the relative benefits of the whole work to the several municipalities are altered.

Notwithstanding, however, any provisions of this act, the entire cost of construction of any port facilities within the city of Albany or upon land owned by said city, including the cost of acquiring the necessary real property therefor, shall be borne by the city of Albany. Before any apportionment under this section, or revision thereof, shall be deemed final, the commission shall cause its determination as to such apportionment to be published in at least two daily newspapers in the district, twice in each week for two weeks, and shall therewith give notice of a public hearing on such apportionment, to be held not less than ten days after the last publication. It shall also give notice to each municipality by mailing a notice setting forth the time and place of such hearing, which said notice shall be mailed to the mayor, and the corporation counsel of each municipality at least ten days before the day of such hearing. It shall give such a hearing and the representatives of the governing body of a municipality and any taxpayer in the district may be heard for or in opposition to such apportionment. After such hearing the commission shall file in the office of the clerk of each such municipality its final determination, either affirming such original apportionment or modifying it and affirming it as modified.

§ 9. The fiscal year of the district shall be from July first to June thirtieth, inclusive. Annually, in the month of June, the commission shall file with the clerk and with the treasurer of each city in the district, a statement of the amount to be raised upon the territory within such city and paid to the commission, for the estimated expenditures of the commission under this act during such fiscal year, including construction cost, expenses other than for construction, and installments of the district debt, if any, and interest, to fall due in such year. The statement shall specify when the amount shall be paid to the commission which shall, so far as practicable, be after the collection of taxes next to be levied in or for such municipality. The clerk of each city shall cause such statement to be presented to the legislative governing body, and board of estimate, if any, of the city, at its next meeting, and such board or body shall cause the amount chargeable to the several parcels of real estate in the city to be levied upon such real estate in the city by the first annual municipal

tax levy next occurring, in proportion to the valuation of the taxable real property for city taxes. The amounts chargeable under this section, when collected, shall be paid to the treasurer of the commission. In determining the total amount to be raised for any fiscal year under this section the commission shall deduct from its estimate of total expenditures the probable amount of net revenues, if any, from its port facilities, and the amount of any appropriations by the legislature to be available in such year.

Prior to the first apportionment of construction cost to the several municipalities, under this act, and the fixing of the decimal representing the proportion of benefit, the expenses of the commission, or so much thereof as may not be provided for by state appropriations, annually shall be borne by the several cities in the proportion that the assessed valuation of the taxable property in the district; and the necessary statement shall be filed with each city clerk, as provided in this section, and the provisions of this section, relative to levy and collection of a tax to pay such amounts shall apply thereto.

§ 10. After estimates of the cost of any improvement or improvements by the commission under this act shall have been made and after the apportionment, or any revision or apportionment, covering any such improvement or improvements shall have become final, as provided in this act, whereby the proportions to be paid by the real estate in the several municipalities shall have been determined, the commission may provide moneys for construction of such improvements, in an amount not exceeding such estimated cost. Any judicial review of such final apportionment by the commission, however, shall not delay or prevent the commencement of construction work. Bonds or notes of the district shall not be construed in any event as obligations of the state, and the state shall not be obligated to pay the principal or interest, or either.

§ 10-A. Subject to the provisions of section three of article eight of the constitution and section six-a of the general municipal law, notwithstanding the provisions of any other general, special or local

laws: (a) With the approval of and on terms and conditions prescribed by the state comptroller, the commission may refund the principal of and issue bonds of the district to pay the interest on any bonded indebtedness or portion thereof contracted before the first day of January, nineteen hundred thirty-nine. The consent of the state comptroller shall be executed under his hand and seal in duplicate. One of such duplicates shall be filed in the office of the department of audit and control and the other in the office of the chief fiscal officer of the commission. Both of such duplicates shall be public records. All such bonds shall contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and of the regularity of the issue. The validity of the bonds hereby authorized shall in no wise be affected by the invalidity of, or any irregularity in any proceeding authorizing the issuance of, the obligations the principal of or interest on which is to be paid with the proceeds thereof except that bonds shall not be issued to pay the principal of or interest on bonds of the district adjudged invalid by the final judgment of a court of competent jurisdiction. No bonds issued pursuant to this section shall be refunded. Such bonds may be authorized at any general or special meeting of the commission by the vote of a majority of the commission. Such bonds shall show upon their face that the payment thereof is secured by general tax in the several municipalities in the Albany Port District under the provisions of this act, reciting the title and chapter number hereof, and that the proceeds of such tax are hereby pledged for the payment of such bonds. Such bonds 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, or either, nor shall such bonds be considered obligations of cities and subject to the provisions of section four of article eight of the constitution of the state of New York. Such bonds shall bear interest at a rate of not exceeding six per centum per annum, payable semi-annually. Such bonds, as issued from time to time, shall be paid in annual installments, the first of which shall be payable not more than five years and the last of which shall be payable not later than the year nineteen hundred and sixty-one. None of such installments shall be more than twice the amount of any prior installment. Such bonds shall be exempt from taxation except for transfer and inheritance taxes. They

shall be signed by the chairman of the commission, attested by its secretary and have the seal of the district affixed thereto. The coupons shall bear the facsimile signature of the treasurer of the commission. They shall be sold at not less than par. The commission shall sell such bonds to the highest bidder after advertisement for a period of five consecutive days, Sundays and holidays excepted, in at least two daily newspapers published in the city of Albany. Advertisements shall contain a provision to the effect that the commission, in its discretion, may reject any or all bids made in pursuance of such advertisement and in the event of such rejection, the commission is authorized to readvertise for bids in the form and manner above described as many times as in its judgment may be necessary to effect a sale. In the event that at any time prior to April first, nineteen hundred forty-three no bids are received on the date named in such advertisement, the commission may, within sixty days thereafter at a regular or special meeting at which not less than four members are present and acting by the affirmative vote of not less than three members, sell such bonds or any part thereof at private sale, with or without competition on any bid which it could have legally accepted had it been received on the date named in such advertisement. Such bonds shall be lawful investments for trustees and savings banks of the state, and may be accepted as investments for any of the sinking funds or other funds or moneys of the state or of any of the agencies, municipalities or political subdivisions of the state.

(b) The amount of any bonds issued hereunder for any purpose, except to pay the principal on maturing bonds, shall be included in ascertaining the power of each of the cities within the district to contract indebtedness; the portion of the total to be included in computing the debt of each city to be determined in accordance with general law.

(c) Any provisions of this chapter inconsistent with the provisions of this section ten-A shall not apply to the bonds hereby authorized to be issued.

§ 10-b. Notwithstanding any inconsistent provision of this act or of any other general, special or local law, all bonds issued by such commission after this section shall become effective, shall be sold at

public sale, except that such commission may sell any of its bonds at private sale if the state comptroller upon proper application shall give his approval and consent in writing to such private sale and the terms thereof. Notwithstanding the foregoing, however, such commission may not sell any of its bonds to the state comptroller at private sale or exchange any of its bonds for any of its bonds or notes held by the state comptroller.

§ 11. No proposition of expenditure of money for the acquisition of any real property, or interest therein or the purchase of machinery or equipment, or the work of construction of terminals, involving an expenditure of one thousand dollars or upwards, shall be adopted without the consent of three members of such commission. All construction work and the purchase of machinery which would involve an expenditure of more than one thousand dollars shall be upon contract, let after advertisement and competitive bidding, and on plans and specifications on file in the office of the commission.

§ 12. No member of such commission shall be pecuniarily interested, either directly or indirectly, in the doing or furnishing of any work or material for the commission or any municipality, in carrying out such plan of port development.

§ 13. Any municipality within the district may set aside and devote any property owned by such municipality and which is suitable for port facilities, to the uses and control of the port commission, provided, that the legislative body of such municipality shall, by a majority vote of all its members and, where there is a board of estimate and apportionment, by a vote also of a majority of all the members of such board, give consent to such use and control and prescribe the terms and conditions upon which the same shall be held.

§ 14. The title to any real estate, or interest therein acquired for

port facilities and to any improvements which may be made thereon, situate in any municipality which has paid for the same, shall remain in such municipality; but such property shall be maintained and operated subject to the rules and the control of the port commission, and shall be used for port purposes.

§ 15. The sum of five thousand dollars (\$5,000), or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury not otherwise appropriated, for paying the expenses in connection with the appointment and functioning of the commission, as provided in this act, until the moneys necessary for meeting the expenses thereafter incurred by such commission, may be assessed, levied and collected in the municipalities within the port district as hereinbefore provided; and such sum, or so much thereof as may be necessary, shall be paid by the state treasurer on the warrant of the comptroller upon the order of the chairman of the port commission.