§ 209-q. Sewer, drainage or water improvements. 1. Definition and application. (a) The terms "sewer improvement" and/or "drainage improvement", as used in this section, shall mean any facility, service, function, activity or physical public betterment which may be provided by the establishment of a sewer district, wastewater disposal district and/or drainage district pursuant to article twelve or twelve-A of this chapter.

(b) The term "water improvement", as used in this section, shall mean any facility, service, function, activity or physical public betterment which may be provided by the establishment of a water district pursuant to article twelve or twelve-A of this chapter.

(c) The powers provided by this section shall be deemed to be in addition to those provided in article twelve or article twelve-A of this chapter and shall not be deemed to limit or supersede any powers provided in either of such articles; provided, however, that nothing in this section shall be deemed to authorize the providing of a sewer, drainage or water improvement in, or the charging of the costs thereof against any area of the town located in any village.

2. Plans, reports and maps. The town board may adopt a resolution appropriating a specific amount to pay the cost of preparing a general plan, report and map for providing a sewer, drainage or water improvement in the area of the town outside of any villages, or in any portion of such area. All such plans, reports and maps shall conform with the requirements of section two hundred nine-c of this chapter. The town board may determine that such plans, reports and maps shall be prepared by or under the supervision of town officers and employees to be designated by the town board, or by persons to be employed for the purpose, or the town board may contract for the preparation thereof within the limitations of the amount appropriated. Except as otherwise provided herein, the expense incurred for the preparation of such plans, reports and maps shall be a charge on the area of the town outside of any villages, and shall be assessed, levied and collected in the same manner as other town charges. If the town board shall thereafter make such sewer, drainage or water improvement, the expense incurred by the town for the preparation of the plans, reports and maps therefor shall be deemed to be part of the cost of such sewer, drainage or water

improvement and the town shall be reimbursed for such portion of that amount, if any, which the town board, at the public hearing held pursuant to subdivision three of this section, shall allocate against such benefited area, if any.

3. Hearing. Subsequent to the date of filing of the plan, report and map in the office of the town clerk, as required by section two hundred nine-c of this chapter, the town board may adopt an order and enter the same in the minutes of its proceedings reciting the proposed sewer, drainage or water improvement, a description of the boundaries of the proposed benefited area, if any, the maximum amount proposed to be expended for the proposed sewer, drainage or water improvement, the proposed method of apportioning the costs of such sewer, drainage or water improvement, the proposed method of financing to be employed, the fact that a plan, report and map describing the same are on file in the town clerk's office for public inspection and specifying the time when and the place where such board will meet and hold a public hearing at which all persons interested in the subject thereof may be heard concerning the same. The board shall cause a copy of such order to be published at least once in a newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of this chapter, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing, and shall also cause a copy thereof to be posted upon the bulletin board in the office of the town clerk.

4. Change in boundaries or apportionment of costs. If the town board shall determine, after the hearing, on notice as provided in subdivision three hereof and upon the evidence given thereat, that any of the property in a proposed benefited area, if any, is not benefited by the sewer, drainage or water improvement, or that any property benefited by the sewer, drainage or water improvement is not included in the proposed benefited area and that the boundaries of the benefited area should be changed accordingly, or that the proposed method of apportioning the costs of such sewer, drainage or water improvement should be changed, the board shall specify the changes and shall call a further public hearing at a definite time and place not less than fifteen nor more than

twenty-five days after such previous hearing. Notice of such further hearing shall be published and posted in the manner provided in subdivision three hereof except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the benefited area or the method of apportioning the costs of the sewer, drainage or water improvement.

5. Increase in maximum amount. At any time prior to the completion of a sewer, drainage or water improvement, the maximum amount proposed to be expended for such sewer, drainage or water improvement, as stated in the notice of public hearing pursuant to subdivision three or four hereof, may be increased by an order of the town board provided that the town board shall, after a public hearing held in the manner prescribed in subdivision three hereof, determine that it is in the public interest to authorize the increase in such maximum amount. If it is proposed or required that the town shall finance the increase in the maximum amount proposed to be expended for the sewer, drainage or water improvement by the issuance of bonds, notes, certificates or other evidences of indebtedness and the total estimated expense of such improvement including the increase in the maximum amount shall exceed one-tenth of one per centum of the full valuation of the taxable real property in the area of the town outside of villages, the town board may not make an order pursuant to this subdivision unless the comptroller of the state of New York shall have made, subsequent to the public hearing required by this subdivision, an order approving the increase at such maximum amount as stated in the notice of hearing required by this subdivision. The order of the comptroller shall be prepared in duplicate and one copy thereof filed in the office of the department of audit and control and the other copy in the office of the town clerk of the town. If the original authorization of the sewer, drainage or water improvement was subject to a permissive referendum pursuant to paragraph (a) of subdivision eleven of this section or made subject to a mandatory or permissive referendum pursuant to paragraph (b) of subdivision eleven of this section, any order of the town board increasing the maximum amount to be expended shall be subject to the same type of referendum. The provisions of this subdivision referring to a referendum, shall not be applicable to any order increasing the maximum amount to be expended for

a sewer improvement adopted by the town board of any town which has been ordered by the state commissioner of health or water resources commission to provide sewage treatment facilities or directing compliance with standards or determinations or orders promulgated pursuant to article twelve of the public health law.

6. Authorization of improvement; judicial review. (a) After the hearing on notice as provided in subdivision three or four hereof, and upon the evidence given thereat, the town board shall determine by resolution whether or not it is in the public interest to make such sewer, drainage or water improvement.

(b) If the town board shall determine that it is not in the public interest to make the proposed sewer, drainage or water improvement, the board shall adopt a resolution to that effect.

(c) If the town board shall determine that it is in the public interest, the board may adopt a resolution authorizing such sewer, drainage or water improvement, subject to the approval of the state comptroller where such approval is required by subdivision thirteen of this section. Such resolution shall contain a statement of the manner in which the costs of the sewer, drainage or water improvement are to be apportioned, and a description of the boundaries of the benefited area, if any, as finally determined by the town board where any part of the cost is to be raised by special assessments upon benefited property.

(d) The town clerk shall cause a certified copy of any resolution or order adopted pursuant to paragraph (c) of this subdivision, subdivision five or paragraph (c) of subdivision eight of this section to be duly recorded in the office of the clerk of the county in which the town is located within ten days after the adoption of such resolution, or within ten days of the receipt of notification of the approval of the state comptroller where such approval is required by subdivision five or subdivision thirteen of this section. When so recorded, such resolution shall be presumptive evidence of the regularity of the proceedings and actions taken by the town board in relation thereto.

(e) Any interested person aggrieved by any resolution or order adopted pursuant to paragraph (c) of this subdivision, subdivision five or paragraph (c) of subdivision eight of this section may review the same by a proceeding pursuant to article seventy-eight of the civil practice

law and rules provided such proceeding is commenced within thirty days from the date of the recording of the certified copy of the resolution or order in the office of the county clerk. Any such resolution or order shall be final and conclusive unless a proceeding pursuant to article seventy-eight of the civil practice law and rules has been commenced within thirty days from the date of recording thereof. No review shall be had unless at the time the proceeding is commenced the interested person seeking the review shall give an undertaking approved by the supreme court, or a justice thereof, as to form, amount and sufficiency of sureties, that, in the event of failure to modify such resolution or order he or they will pay to the town board all costs and expenses as are incurred by it on account of the said proceeding as shall be determined by the court. In the event that upon such review there shall be any modification by the court of such resolution the court shall direct the modification thereof by order which shall be final and conclusive and such town board shall cause such order to be recorded and filed in the same place and manner as was the resolution or order appealed from.

7. Performance of the work. After the resolution authorizing a sewer, drainage or water improvement shall become effective, such sewer, drainage or water improvement may be made and contracts therefor may be let in the manner provided in section one hundred ninety-seven of this chapter.

8. Apportionment of costs. (a) The cost of any such sewer, drainage or water improvement shall be borne partly by the area of the town outside of any village and partly by the lands benefited thereby; or by the area of the town outside of any village; or entirely by the lands benefited thereby, as the town board, in its discretion, shall provide. Where, however, (1) any part of the cost of the sewer, drainage or water improvement is to be borne by property in a described benefited area, such costs shall be assessed, levied and collected from the several lots or parcels of land within such benefited area either in the same manner and at the same time as other town charges, or in just proportion to the amount of benefit which the sewer, drainage or water improvement shall confer upon such lots or parcels, or (2) any part of the cost of the

sewer, drainage or water improvement is to be borne by the entire area of the town outside of any villages, and such area has not been determined to be the benefited area, such costs shall be assessed, levied and collected from the several lots and parcels of land in such area in the same manner and at the same time as other town charges.

(b) In the event that a proposed sewer, drainage or water improvement is not made, any expense incurred by the town in relation thereto, including costs of publication of notices and of any referendum, shall be a charge upon the area of the town outside of any villages, and shall be assessed, levied and collected in the same manner as other town charges.

(c) At any time after the completion of a sewer, drainage or water improvement pursuant to the provisions of this section, the apportionment of the costs thereof as between the benefited area and the area of the town outside of any village, as stated in the notice of public hearing pursuant to subdivision three or four hereof, may be changed by resolution of the town board provided that the town board shall, after a public hearing, determine that it is in the public interest to authorize the change in such apportionment. The town board shall give notice of such hearing by at least a single publication of a notice in a newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of this chapter at least ten but not more than twenty days prior to the date specified for such hearing, specifying the time when and place where such hearing will be held and stating the change proposed in the apportionment of the costs of the sewer, drainage or water improvement. The only change in the apportionment of the costs of a sewer, drainage or water improvement that may be authorized pursuant to this paragraph shall be an increase in the share of such costs to be borne by the area of the town outside of any village, with a corresponding decrease in the share of such costs to be borne by the benefited area.

(d) The cost of any such improvement may include such portion of the cost of existing or authorized improvements as the town board shall determine. Such determination shall be based on a finding that there is an equitable and reasonable relationship between such improvement and the existing or authorized improvements.

9. Financing improvement. The funds necessary to pay the cost of any sewer, drainage or water improvement made pursuant to this section shall be raised in a manner provided in article fifteen of this chapter, as determined by the town board, or pursuant to a local law adopted pursuant to the municipal home rule law.

10. Petition. Five resident owners of taxable real property located within the area of the town outside of any villages, may petition the town board to acquire, provide or construct any sewer, drainage or water improvement described in subdivision one of this section. Such petition shall be signed by the petitioners, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions. When any such petition shall have been presented, the town board may direct the preparation of a plan, report and map for such sewer, drainage or water improvement and proceed in the manner provided in this section, or it may adopt a resolution, reciting in general terms the filing of such petition, the proposed sewer, drainage or water improvement and specifying the time when and the place where such board will meet to consider the petition and to hear all persons interested in the subject. Notice of such meeting shall be published in the manner provided in subdivision three of this section and shall state the time and place of the meeting and the purpose thereof. The petitioners shall be required to deposit with such petition the sum of one hundred dollars to cover all cost of publishing and posting notices of meetings of the town board to consider the petition. If the board determines to proceed, pursuant to this subdivision, with further development of the proposed sewer, drainage or water improvement, such deposit shall be returned in full to the petitioners, but if the petition be denied, the surplus only shall be so returned after paying the expenses mentioned in this subdivision. If the town board shall determine after such hearing and upon the evidence given thereat, that the proposed sewer, drainage or water improvement is in the public interest and economically feasible, the board shall direct the preparation of a general plan, report and map for such improvement and proceed in the manner provided in this section.

11. Referendum. (a) Any resolution adopted pursuant to paragraph (c)

of subdivision six of this section authorizing a sewer, drainage or water improvement, any part of the cost of which is to be borne by the entire area of the town outside of any villages, and any resolution adopted pursuant to paragraph (c) of subdivision eight of this section which will result in an increase in the share of the costs of a sewer, drainage or water improvement to be borne by the area of the town outside of any villages in any one fiscal year of more than ten per centum of the maximum amount proposed to be expended, as stated in the last notice of public hearing for such sewer, drainage or water improvement pursuant to subdivision three, four or five of this section, shall be subject to a permissive referendum in the manner prescribed in article seven of this chapter, as modified by paragraph (c) of this subdivision.

(b) Except as provided in paragraph (a) of this subdivision, the town board, in its discretion, may determine that any resolution adopted pursuant to subdivision two, paragraph (c) of subdivision six or paragraph (c) of subdivision eight of this section, shall be subject to a mandatory or permissive referendum in the manner prescribed in article six or seven of this chapter, as the case may be, as modified by paragraph (c) of this subdivision. Such determination, if any, shall be included in the resolution so adopted. Any such referendum shall be held in the entire area of the town outside of any villages, except that, in the case of a resolution adopted pursuant to subdivision two or paragraph (c) of subdivision six of this section where any part of the cost of the improvement is to be borne by an area of the town less than the entire area of the town outside of any villages, the resolution may provide that the referendum shall be held in such lesser area.

(c) Any resolution submitted to a referendum pursuant to this section shall not become effective unless it is approved by the affirmative vote of a majority of the owners of taxable real property voting thereon whose property is situate in the area of the town outside of any villages, or in such lesser area described in a resolution as authorized in paragraph (b) of this subdivision, as shown on the latest completed assessment roll of the town. A petition requesting a referendum shall be sufficient if signed and acknowledged or proved by the owners of taxable real property situate in the area of the town outside of any villages, or in such lesser area described in the resolution as authorized in

paragraph (b) of this subdivision, as shown upon the latest completed assessment roll of such town, in number equal to at least ten percent of the total number of such owners. For the purposes of this subdivision, a corporate owner of such taxable real property shall be considered one owner for the purposes of a petition requesting a referendum and shall be entitled to one vote to be cast by an officer or agent of the corporation or other duly authorized person designated by appropriate resolution of such corporation. The town clerk shall cause to be prepared and have available for distribution proper forms for a petition for a referendum under this section and shall distribute a supply to any person requesting the same.

12. Town function. Any sewer, drainage or water improvement constructed, acquired or provided pursuant to this section shall be a town function and the town board shall be responsible for the necessary management, maintenance, operation and repair thereof. The cost of such management, maintenance, operation and repair shall be a charge upon the area of the town outside of any villages and shall be levied and collected in the same manner and at the same time as other town charges.

12-a. Sewer and/or drainage rents and water rates. The town board may establish sewer and/or drainage rents and water rates as provided in paragraph (l) of subdivision one and paragraph (d) of subdivision three of section one hundred ninety-eight of this chapter.

13. Comptroller's approval. (a) Where it is proposed or required that the town shall finance the cost of any sewer, drainage or water improvement authorized by this section by the issuance of bonds, notes, certificates or other evidences of indebtedness of the town therefor and where the estimated expense of such improvement shall exceed one-tenth of one per centum of the full valuation of the taxable real property in the area of the town outside of villages, the permission of the state comptroller shall be required for such sewer, drainage or water improvement.

(b) Within ten days after the adoption of a resolution by the town board pursuant to paragraph (c) of subdivision six of this section, which requires the approval of the state comptroller pursuant to

paragraph (a) of this subdivision, the town clerk shall file a certified copy of such resolution in the office of the state department of audit and control at Albany, New York, together with an application for the approval of the state comptroller to the providing of such sewer, drainage or water improvement. The application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine. Such application shall be in such form and shall contain such information as shall be prescribed by the state comptroller.

(c) Whenever such an application shall be filed in the office of the department of audit and control, the state comptroller shall determine whether the public interest will be served by providing such sewer, drainage or water improvement in the manner proposed and also whether the cost thereof will be an undue burden upon the property which is to bear the cost of such sewer, drainage or water improvement. The state comptroller may make such determinations upon the original or any amended application, or in his discretion may require the submission of additional information or data in such form and detail as he shall deem sufficient, or may cause an investigation to be made to aid him in making the determinations above mentioned.

(d) Upon the expiration of fifteen days from the date of the filing of such application, the state comptroller shall make an order, in duplicate, granting or denying approval for such sewer, drainage or water improvement and shall file one copy of such order in the office of the state department of audit and control at Albany, New York, and the other in the office of the town clerk of the town in which the proposed improvement is to be provided. The town clerk shall thereupon notify the members of the town board of the receipt of such order and the contents thereof.

14. Lease of improvements. (a) The town board may lease for a term not to exceed forty years all or any part of the property or facility constructed or operated as a town function under this article to a county, a city, a village, a town, a public authority, a town on behalf of an improvement district, a county on behalf of a county district, or a joint water works system established pursuant to article five-B of the general municipal law, provided, however, that such lease shall be

subject to a permissive referendum held in the manner prescribed in article seven of this chapter, as modified by paragraph (c) of subdivision eleven of this section except that a petition requesting a referendum shall be sufficient if signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the area of the town outside of any villages, as shown upon the latest completed assessment roll of such town, in a number equal to at least five percent of the total number of said owners, or one hundred of said owners, whichever is the lesser.

(b) The proceeds of the lease of all or part of such property or facility shall be deposited in a reserve fund established for the purpose of retiring outstanding obligations issued on behalf of the town to finance the cost of the property or facility leased, and shall be expended only for such purposes except that if the proceeds exceed the sum of all installments of principal of and interest on such indebtedness due or to become due, or if, when such obligations shall have been retired, any proceeds of such reserve fund remain unexpended, such excess monies may be used for any purpose which would be properly charged against the area of the town outside of any villages.