

CHAPTER 634

AN ACT relating to towns, constituting chapter sixty-two of the consolidated laws

Became a law April 8, 1932, with the approval of the Governor.
Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 62 OF THE CONSOLIDATED LAWS

TOWN LAW

- Article 1. Short title; definitions. (§§ 1, 2.)
2. Classification of towns. (§§ 10-12.)
3. Town officers, powers, duties and compensation.
(§§ 20-42.)
- 3-A. Suburban town law. (§§ 50--57-a.)
- 3-B. Town Manager. (§§ 58--58-a.)
4. Town boards. (§§ 60-69.)
5. Alteration of boundaries. (§§ 73-79.)
- 5-A. Dissolution of certain towns. (§ 79-a.)
- 5-B. Consolidation of towns. (§§ 79-b--79-o.)
6. Town elections. (§§ 80-88.)
7. Permissive referendum. (§§ 90-94.)
8. Finances. (§§ 100-125.)
9. Ordinances and licenses. (§§ 130-139.)
- 9-A. Self-supporting improvements. (§§ 140-143.)
10. Police. (§§ 150-158.)
11. Fire, fire alarm and fire protection districts.
(§§ 170-189.)
- 11-A. Joint fire districts in towns and villages.
(§§ 189-a--189-i.)
12. District and special improvements. (§§ 190--208-b.)
- 12-A. Establishment or extension of improvement districts -
alternate procedure. (§§ 209--209-i.)
- 12-C. Sewer or water improvements. (§§ 209-q--209-s.)
13. Improvement district commissioners. (§§ 210-216.)
14. General improvements. (§§ 220-223.)
15. Financing of public improvements. (§§ 231-247.)
16. Zoning and planning. (§§ 261-285.)

17. Cemeteries. (§§ 290-296.)
18. Fences, strays and pounds. (§§ 300-327.)
19. Laws repealed; Temporary provisions and saving clause.
(§§ 340-342.)

ARTICLE 1

SHORT TITLE; DEFINITIONS

Section 1. Short title.

2. Definition of town.

Section 1. Short title. This chapter shall be known as the "town law."

§ 2. Definition of town. A town is a municipal corporation comprising the inhabitants within its boundaries, and formed for the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as have been, or, may be conferred or imposed upon it by law.

ARTICLE 2

CLASSIFICATION OF TOWNS

Section 10. Classification of towns.

11. Mandatory change of classification.

12. Optional change of classification.

§ 10. Classification of towns. Towns are divided into classes according to population, as shown by the latest federal or state census or enumeration, as follows:

First class. Towns containing a population of ten thousand or more, excepting towns in Broome and Suffolk counties, and excepting also the town of Potsdam in St. Lawrence county, and such other towns as may determine to become towns of the first class pursuant to the provisions

of this article. Every town in the county of Westchester shall be a town of the first class.

Second class. Towns containing a population of less than ten thousand, excepting towns in Westchester county and such towns as shall have determined to become towns of the first class pursuant to the provisions of this article. Every town in the counties of Suffolk and Broome and the town of Potsdam in the county of St. Lawrence.

§ 11. Mandatory change of classification. 1. Upon the completion of each decennial federal census, the secretary of state shall obtain from the proper federal authorities an authenticated statement of the population of each town according to such federal census. When the population of any town as shown by such federal census is five thousand or more, the secretary of state shall file with the town clerk of such town a copy of such authenticated statement. Whenever the population of any town of the second class shall be shown to be ten thousand or more according to such certificate or authenticated statement, excepting towns in Suffolk and Broome counties, and excepting also the town of Potsdam in St. Lawrence county and the town of Ulster in Ulster county, the classification of such town shall be changed to that of a town of the first class to become effective on the first day of January succeeding the next biennial election held in said town, except that said town shall elect at the biennial election hereinbefore referred to, all the officers and only such as are required to be elected in a town of the first class.

2. (a) Any town which shall have become a town of the first class, pursuant to subdivision one of this section, shall elect at the biennial town election immediately preceding the effective date of the change of classification, the following town officers: a supervisor, a town clerk and a town superintendent of highways for terms of two years each, and a receiver of taxes and assessments for a term of four years, except as otherwise provided by this chapter.

(b) In addition to the officers specified in the preceding paragraph, there shall also be elected at such biennial town election:

(1) In a town which has two justices of the peace and two town council members and the term of one of such justices of the peace and one of such town council members expires on December thirty-first following such election, one justice of the peace for a term of four years, two town council members for terms of four years each, and one town council member for a term of two years;

(2) In a town which has two justices of the peace and two town council members and the term of office of both such justices of the peace expires on December thirty-first following such election, two justices of the peace for terms of four years each, and two town council members for terms of four years each;

(3) In a town which has two justices of the peace and two town council members and the term of office of both such town council members expires on December thirty-first following such election, two town council members for terms of four years each, and two town council members for terms of two years each.

(c) The term of office of each of the officers elected at such biennial town election shall begin on the first day of January next succeeding said election.

(d) Party nominations for the offices to be filled at said biennial town election shall be made and designating petitions may be filed and such officers shall be elected in the manner provided by law for the nomination, designation and election of town officers in such town.

(e) This section shall not be construed to require the election of a town officer for a two year term in any town in which such term has been increased to four years pursuant to the provisions of this chapter; and nothing contained in this section shall be construed to abridge the term of office of any such town officer elected for a term of four years prior to change of classification.

(f) This section shall not be construed to require the election of a town clerk or a town superintendent of highways if such office shall be an appointive office in such town on the effective date of such change of classification.

(g) Not less than ninety days before the biennial town election immediately preceding the effective date of the change of classification, the town board may adopt a resolution, subject to a permissive referendum, determining that the office of receiver of taxes

and assessments shall be an appointive office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition for a referendum thereon shall have been filed within the time specified in article seven of this chapter, or if the majority of the votes cast on a proposition to approve such a resolution submitted pursuant to the provisions of said article seven shall be in the affirmative, the office of receiver of taxes and assessments shall thereafter be an appointive office in such town and no receiver of taxes and assessments shall be elected at the biennial town election immediately preceding the effective date of such change of classification, and on and after the effective date of such change of classification, the town board shall appoint a receiver of taxes and assessments who shall take and hold office for the term provided by this chapter. In any town in which the office of receiver of taxes and assessments shall be appointive, the town board may appoint the town clerk of said town as the receiver of taxes and assessments thereof.

3. Nothing contained in this section shall be construed to abridge the term of office of a justice of the peace heretofore elected in any town to which this section shall apply, but on and after the effective date of such change of classification, any such justice of the peace shall exercise only such powers and shall be subject to only such duties, responsibilities and liabilities as shall be prescribed by law with respect to a justice of the peace in a town of the first class.

4. Town collectors and school district collectors. In any town to which this section shall apply, the collector shall continue in office until the effective date of such change of classification. On and after such date, the office of collector and the office of school district collector shall be abolished in such town and no collector or school district collector shall be chosen at any time to succeed the incumbents of the offices so abolished.

5. (a) Assessors. If any such town shall have three elective assessors, no successors thereto shall be elected at the biennial town

election immediately preceding the effective date of such change of classification and the terms of office of such elective assessors whose term would extend beyond the effective date of such change of classification shall terminate on the effective date of such change of classification. On or after the effective date of such change of classification, the town board of said town shall appoint an assessor in the manner and for the term prescribed by section three hundred ten of the real property tax law.

(b) If any such town shall have one elective assessor, no successor thereto shall be elected at the biennial town election immediately preceding the effective date of such change of classification. On or after the effective date of such change of classification, the town board shall appoint an assessor in the manner and for the term prescribed by section three hundred ten of the real property tax law.

(c) If any such town shall have one appointive assessor who was appointed in the manner and for the term prescribed by section three hundred ten of the real property tax law, such assessor shall remain in office for the balance of his unexpired term or shall continue in office for an indefinite term if the office of assessor shall have been for an indefinite term immediately preceding the effective date of such change of classification.

6. Town board. On and after the effective date of the change of classification of such town, the supervisor and the town council members shall constitute the town board thereof. Such town board shall have all the powers and be subject to all the duties of a town board of a town of the first class.

§ 12. Optional change of classification. 1. Any town of the second class, including towns in Suffolk and Broome counties and the town of Ulster in Ulster county, having a population of five thousand or more as shown by the latest federal census or in which the assessed valuation of the taxable real property as shown by the latest completed assessment role exceeds ten million dollars or adjoining a city having a population of three hundred thousand or more as shown by the latest federal census, may become a town of the first class, by either of the following

methods:

(a) By the adoption by the town board of a resolution therefor, subject to a permissive referendum; or

(b) By the adoption of a proposition therefor, by the affirmative vote of a majority of the qualified electors of the town voting thereon at a special or biennial town election, pursuant to subdivision three of section eighty-one of this chapter.

2. (a) If any such town shall determine, pursuant to the method specified in paragraph (a) of subdivision one of this section, to become a town of the first class, the town board shall cause certified copies of the resolution to be filed in the offices of the department of state and the department of audit and control.

There shall also be filed therewith the affidavit of the town clerk that no petition requiring the submission to the qualified electors of the town of a proposition approving such resolution was filed with said town clerk, if such resolution was not so submitted.

If a proposition approving a resolution changing the classification of a town was submitted to the electors, pursuant to the filing of a petition therefor or upon the motion of the town board, there shall be filed in the office of each of such state departments copies of the certificate of the election inspectors at such election, duly certified by the town clerk.

(b) If any such town shall determine, pursuant to the method specified in paragraph (b) of subdivision one of this section, to become a town of the first class, the town board shall cause copies of the certificate of the election inspectors or board of canvassers of the town election at which the proposition for the change of classification was adopted, duly certified by the town clerk or board of canvassers, to be filed in the offices of the department of state and the department of audit and control.

3. (a) If a town shall determine, pursuant to the method specified in paragraph (a) of subdivision one of this section, to become a town of the first class, such change of classification shall become effective on

the first day of January next succeeding the first biennial town election held at least one hundred fifty days after the date of the adoption of the resolution determining, subject to a permissive referendum, to become a town of the first class. On and after said first day of January, such town shall be a town of the first class.

(b) If a town shall determine, pursuant to the method specified in paragraph (b) of subdivision one of this section, to become a town of the first class, such change of classification shall become effective on the first day of January next succeeding the first biennial town election held at least ninety days after the date of adoption of the proposition changing the classification of the town to that of a town of the first class, pursuant to article six of this chapter. On and after said first day of January, such town shall be a town of the first class.

4. (a) Any town which shall have determined, pursuant to either method specified in subdivision one of this section, to become a town of the first class, shall elect, at the biennial town election immediately preceding the effective date of the change of classification, the following town officers: a supervisor for a term of two years, and, except as otherwise provided herein, a town clerk and a town superintendent of highways for terms of two years each and a receiver of taxes and assessments for a term of four years.

(b) In addition to the officers specified in the preceding paragraph, there shall also be elected at such biennial town election in a town which has four or more justices of the peace but no town council member on the first day of July immediately preceding such election: one justice of the peace for a term of four years, two town council members for terms of four years each, and two town council members for terms of two years each.

Any such town which on the first day of July preceding said biennial town election has three justices of the peace and one town council member, shall elect at said biennial town election one justice of the peace for a term of four years, two town council members for terms of four years each and one town council member for a term of two years, in addition to the officers specified in paragraph (a) of this subdivision.

Any such town which on the first day of July preceding said biennial town election has two justices of the peace and two town council members and the term of one of such justices of the peace and of one of such town council members expires on December thirty-first following such election, shall elect at such election one justice of the peace for a term of four years, two town council members for terms of four years each and one town council member for a term of two years, in addition to the officers specified in paragraph (a) of this subdivision.

Any such town which on the first day of July preceding said biennial town election has two justices of the peace and two town council members and the term of office of both such justices of the peace expires on December thirty-first following such election, shall elect at such election two justices of the peace for terms of four years each and two town council members for terms of four years each, in addition to the officers specified in paragraph (a) of this subdivision.

Any such town which on the first day of July preceding said biennial town election has two justices of the peace and two town council members and the term of office of both such town council members expires on December thirty-first following such election, shall elect at such election two town council members for terms of four years each and two town council members for terms of two years each, in addition to the officers specified in paragraph (a) of this subdivision.

(c) The term of office of each of the officers elected at said biennial town election shall begin on the first day of January next succeeding said election.

(d) Party nominations for the offices to be filled at said biennial town election shall be made and designating petitions may be filed and such officers shall be elected in the manner provided by law for the nomination, designation and election of town officers in such town.

(e) This section shall not be construed to require the election of a town clerk or a town superintendent of highways if such office shall be an appointive office in such town on the effective date of such change of classification.

(f) Not less than ninety days before the biennial town election immediately preceding the effective date of the change of

classification, the town board may adopt a resolution, subject to a permissive referendum, determining that the office of receiver of taxes and assessments shall be an appointive office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition for a referendum thereon shall have been filed within the time specified in article seven of this chapter, or if the majority of the votes cast on a proposition to approve such a resolution submitted pursuant to the provisions of said article seven shall be in the affirmative, the office of receiver of taxes and assessments shall thereafter be an appointive office in such town and no receiver of taxes and assessments shall be elected at the biennial town election immediately preceding the effective date of such change of classification, and on and after the effective date of such change of classification, the town board shall appoint a receiver of taxes and assessments who shall take and hold office for the term provided by this chapter. In any town in which the office of receiver of taxes and assessments shall be appointive, the town board may appoint the town clerk of said town as the receiver of taxes and assessments thereof.

(g) This section shall not be construed to require the election of a town superintendent of highways for a two year term in any town in which such term has been increased to four years pursuant to the provisions of section twenty-four of this chapter; and nothing contained in this section shall be construed to abridge the term of office of a town superintendent of highways elected for a term of four years prior to change of classification.

5. Nothing contained in this section shall be construed to abridge the term of office of a justice of the peace elected prior to the adoption of the resolution or proposition for the change of classification, but on and after the effective date of such change of classification, any such justice of the peace shall exercise only such powers and shall be subject to only such duties, responsibilities and liabilities as shall be prescribed by law with respect to a justice of the peace in a town of the first class.

6. Town collectors and school district collectors. In any town which shall have determined, pursuant to either method specified in subdivision one of this section, to become a town of the first class, the collector shall continue in office until the effective date of such change of classification. On and after such date, the office of collector and the office of school district collector shall be abolished in such town and no collector or school district collector shall be chosen at any time to succeed the incumbents of the offices so abolished.

7. (a) Assessors. If on the first day of July immediately preceding the effective date of the change of classification any such town shall have three elective assessors, no successors thereto shall be elected at the biennial town election immediately preceding the effective date of such change of classification and the terms of office of all such elective assessors whose term would extend beyond the effective date of such change of classification shall terminate on the effective date of such change of classification. On or after the effective date of such change of classification, the town board of said town shall appoint an assessor in the manner and for the term prescribed by section three hundred ten of the real property tax law.

(b) If on the first day of July immediately preceding the effective date of the change of classification any such town shall have one appointive assessor who shall have been appointed in the manner and for the term prescribed by section three hundred ten of the real property tax law, such assessor shall continue in office for the balance of his unexpired term, or for an indefinite term if the term of office of such assessor shall have been for an indefinite term immediately preceding the effective date of such change of classification.

8. Town board. On and after the effective date of the change of classification of such town, the supervisor and the town council members shall constitute the town board thereof. Such town board shall have all the powers and be subject to all the duties of a town board of a town of the first class.

ARTICLE 3

TOWN OFFICERS, POWERS, DUTIES AND COMPENSATION

Section 20. Town officers.

- 22-b. Chairman of assessors; designation; duties and compensation.
- 22-c. Election and term of assessors in the town of Southamptton, county of Suffolk.
- 23. Eligibility of town officers.
- 23-a. Residence requirement for comptroller of the town of Cortlandt.
- 24. Terms of office.
- 24-a. Terms of office of elective officers.
- 24-b. Election of council members and town justices in the town of Pawling.
- 25. Oaths of office and undertaking.
- 25-a. Fingerprints of persons before appointment as town police officers, or as constables possessing powers in criminal matters.
- 26. Resignation of town officers.
- 27. Compensation of town officers and employees.
- 28. Power to administer oaths.
- 29. Powers and duties of supervisor.
- 30. Powers and duties of town clerk.
- 31. Powers and duties of town justices; requirements; restriction.
- 32. Powers and duties of town superintendent of highways and deputy superintendent.
- 32-a. Entry by town engineer on private lands.
- 33. Powers and duties of assessors.
- 34. Powers and duties of town comptroller.
- 35. Powers and duties of collector.
- 36. Collection of taxes by town clerk.
- 37. Powers and duties of receiver of taxes and assessments.
- 38. Certain offices abolished.
- 39. Powers and duties of constables and town police officers.
- 40. Powers and duties of fence viewers.
- 41. Additional supervisors in certain towns.

41-a. Abolition of the additional office of supervisor of the town of Hempstead.

41-b. (Enacted without section heading).

42. Deputy supervisor.

§ 20. Town officers. 1. (a) Every town of the first class shall have a supervisor, four town council members, unless the number of council members shall have been increased to six or decreased to two as provided by this chapter, a town clerk, two town justices, a town superintendent of highways, one assessor, a receiver of taxes and assessments, as many town police officers and such other employees as the town board may determine necessary for the proper conduct of the affairs of the town. The supervisor, town counsel members, town clerk, town justices, town superintendent of highways and receiver of taxes and assessments in every such town shall be elective. All other officers and employees in such a town shall be appointed by the town board, except as otherwise provided by law. In any town in which a town police department has been established pursuant to law, or which town is a part of a county police district, the town board may appoint not more than four civil officers who shall possess all the powers and duties of constables in civil actions and proceedings only, and shall be paid no salary by the town board but shall be entitled to collect the statutory fees allowed by law in such civil actions and proceedings. The clerk of the court of a town shall be employed and discharged from employment only upon the advice and consent of the town justice or justices.

(b) Except as otherwise provided by law, every town of the second class shall have a supervisor, two justices of the peace, two town council members, a town clerk, a town superintendent of highways, three assessors, a collector, and, if there be no town police department, as many constables as the town board may determine necessary. In any such town in which a town police department has been established pursuant to law, the town board may appoint not more than four civil officers who shall possess all the powers and duties of constables in civil actions and proceedings only, except that the town board of the town of Southold, county of Suffolk, may appoint four additional constables, who shall possess all the powers and duties of constables in civil and

criminal actions and proceedings, solely for the benefit of Fishers Island located in such town; provided, however, that nothing in this paragraph shall be deemed to authorize such constables to carry, repair or dispose of a firearm unless the appropriate license therefore has been issued pursuant to section 400.00 of the penal law; and shall be paid no salary by the town board but shall be entitled to collect the statutory fees allowed by law in such civil actions and proceedings. Every town of the second class may have in addition such other employees as the town board may determine necessary for the proper conduct of the affairs of the town. The supervisor, justices of the peace, town council members, town clerk, town superintendent of highways, assessors and collector in every such town shall be elected. All other town officers and employees in such a town shall be appointed by the town board, except as otherwise provided by law. Provided, however, that in a town having less than three hundred inhabitants according to the latest federal census and having a taxable property valuation of less than one hundred thousand dollars according to the latest assessment roll, there shall be elected one justice of the peace for a term of four years and one assessor for a term of two years, but no town council member. Successors to such officers shall be elected for like terms at the biennial town election prior to the expiration of their terms of office. The clerk of the court of a town shall be employed and discharged from employment only upon the advice and consent of the town justice or justices.

(c) Notwithstanding the provisions of this section or the provisions of any other general or special law, in the town of Smithtown in the county of Suffolk, a proposition calling for the abolition of the office of justice of the peace within such town, as authorized by chapter two hundred seventy-eight of the laws of nineteen hundred fifty-eight, as amended by chapter eight hundred eleven of the laws of nineteen hundred sixty-two, constituting the Suffolk county charter, having been submitted to the electors of such town at the general election held in nineteen hundred sixty-two and having at such election received a majority of affirmative votes, the justices of the peace holding office in such town at the time of such vote shall continue in office until the end of the respective terms for which they were elected. At the general election immediately preceding the expiration of the term of the justice

of the peace in such town whose term shall first expire an additional town council member shall be elected, and at the general election preceding the expiration of the term of the justice of the peace in such town whose term shall be the second such term to expire another additional town council member shall be elected, so that thereafter such town shall have four town council members. Each town council member so elected shall be elected for a term of four years and shall hold office during such term.

(d) Notwithstanding the provisions of this chapter or of any other general or special law, any town, which by the latest federal census or special census has a population of more than fifty thousand inhabitants, may, by a resolution, submit to a referendum a proposition calling for the establishment of the office of a third town justice and a town with a population of more than seventy-five thousand may, by a resolution, submit to a referendum a proposition calling for the establishment of the offices of a third, of a fourth or of a third and fourth town justice. Such referendum must be submitted to the voters at least one hundred twenty days prior to the next biennial town election. At the next biennial town election immediately succeeding the approval of the proposition hereinabove provided for, said town justices shall be elected for a term of four years and shall hold office during such term. Provided, however, such justice so elected shall not serve as a member of the town board but shall exercise all other powers and duties necessary or incident to such office. Successors to such office shall be elected for like terms and shall exercise like powers and duties.

(e) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Southampton, county of Suffolk, may adopt a resolution, subject to a permissive referendum as provided by article seven of this chapter, at least one hundred fifty days prior to any biennial town election determining that such town shall have four town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding biennial election, and quadrennially thereafter, such additional town justice for a term of four years beginning on the first

day of January next succeeding such biennial town election.

(f) Notwithstanding the provisions of paragraph (b) of this subdivision, every town of the second class which has not exercised the option to retain elective assessors in the manner provided by former section fifteen hundred fifty-six of the real property tax law shall have one assessor to be appointed in the manner and for the term prescribed by section three hundred ten of the real property tax law.

(g) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Clarkstown, county of Rockland, may adopt a resolution at least one hundred fifty days prior to any biennial town election determining that such town shall have four town justices. If the town board of such town shall have adopted such a resolution, the electors of such town shall elect at the succeeding biennial election, and quadrennially thereafter, such additional town justice for a term of four years beginning on the first day of January next succeeding such biennial town election.

(h) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Henrietta, county of Monroe may adopt a resolution, subject to a permissive referendum as provided by article seven hereof, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

(i) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Orangetown, county of Rockland may adopt a resolution, subject to a permissive referendum as provided by article seven hereof, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast

on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

(j) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Champlain, county of Clinton may adopt a resolution, subject to a permissive referendum as provided by article seven of this chapter, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

* (k) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Unadilla, county of Otsego may adopt a resolution, subject to a permissive referendum as provided by article seven hereof, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

* NB There are 3 par (k)'s

* (k) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Sennett, county of Cayuga may adopt a resolution, subject to a permissive referendum as provided by article seven hereof, at least sixty days prior to any regular or special election determining that such town shall have three

town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

* NB There are 3 par (k)'s

* (k) Notwithstanding the provisions of any general, special or local law to the contrary, every town which has a contract in force and effect with another municipality for the municipality to provide highway, road and street maintenance and repair for a period of not less than five years may adopt a local law, subject to permissive referendum as provided by article seven of this chapter, not later than July fifteenth of the year prior to which the term of office of the current elected town superintendent of highways shall expire, that the office of the town superintendent of highways shall be abolished. A town which thereafter terminates such a contract shall re-establish the position of town superintendent of highways by local law as an appointive office.

* NB There are 3 par (k)'s

(l) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of East Bloomfield, county of Ontario may adopt a resolution, subject to a permissive referendum as provided by article seven hereof, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election. Upon the election of a third town justice, the town board shall adopt a resolution to abolish one of the offices of town justice for the purpose of staggering the elections of its town justices.

(m) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Guilderland, county of Albany may adopt a resolution, subject to a permissive referendum as provided by article seven of this chapter, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

(n) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Sodus, county of Wayne may adopt a resolution, subject to a permissive referendum as provided by article seven hereof, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election. Upon the election of a third town justice, the town board shall adopt a resolution to abolish one of the offices of town justice for the purpose of staggering the elections of its town justices.

(o) In the event the village court of the village of Ossining, county of Westchester, is abolished effective January first, two thousand twelve, the town court of the town of Ossining, county of Westchester, shall thereupon have three town justices. The third town justice established by this paragraph shall first be filled by election at the regular election held immediately prior to the date of abolition of the village court of the village of Ossining as provided by the election law and the public officers law.

(p) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Wallkill, county of Orange may adopt a resolution, subject to a permissive referendum as provided by article seven of this chapter, at least sixty days prior to any regular or special election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to the vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding general election a town justice who shall take office for a term of four years beginning on the first day of January next succeeding such biennial town election.

(q) In the event the village court of the village of Port Chester, county of Westchester, is abolished effective May fifteenth, two thousand twenty-one, the town court of the town of Rye, county of Westchester, shall thereupon have four town justices. The third and fourth town justices established pursuant to this paragraph shall be filled by election at the regular election held immediately after the date of abolition of the village court of the village of Port Chester as provided by the election law and the public officers law.

(r) Notwithstanding the provisions of any general, special or local law to the contrary, the town board of the town of Rotterdam, county of Schenectady may adopt a resolution, subject to a permissive referendum as provided by article seven of this chapter, at least one hundred fifty days prior to any biennial election determining that such town shall have three town justices. If the town board of such town shall have adopted such a resolution and no petition shall have been filed within the time specified for a referendum thereon, or if a majority of the votes cast on any such proposition submitted to vote of the electors be in the affirmative, the electors of such town shall elect at the succeeding biennial election, and quadrennially thereafter, such additional town justice for a term of four years beginning on the first day of January next succeeding such biennial town election.

2. (a) The town board of every town may establish the office of town attorney or town engineer, or both. If the town board shall so establish

the office of town attorney or town engineer, or both, it shall fix the salary of such officer or officers. In addition, the town board of any such town may employ counsel to the town attorney in respect to any particular subject matter, proceeding or litigation, or it may employ such expert engineering service in respect to any particular subject matter, improvement or proceeding, as it may necessarily require. A town of the first class shall have the authority to appoint such deputies in the offices of the town attorney and town engineer as may be provided by resolution of such board and fix the salaries therefor. A town of the second class having a population of over seventy-five thousand according to the latest federal census or state enumeration shall have the authority to appoint such deputies in the office of the town attorney as may be provided by resolution of such board and fix the salaries therefor. The terms of such offices shall be indefinite and the appointees thereto shall be removable at the pleasure of the town board.

(b) The town board of any town which shall not have established the office of town attorney may employ an attorney to give it such professional service and advice as it may require, and the town board of any town which shall not have established the office of town engineer may employ an engineer to give it such professional service and advice as it may require.

3. (b) The town board of any town of the first class, or any town of the second class having a population of over forty thousand according to the latest federal census or state enumeration, may adopt a resolution establishing the office of town comptroller and appoint a town comptroller who shall hold office until the first day of January next succeeding the first biennial town election held after the time of his appointment. On the first day of January next succeeding the first biennial town election held after the time of the establishment of such office, and biennially thereafter, the town board shall appoint a comptroller who shall hold office for a term of two years. The town board of any town in which the office of town comptroller shall have been established may adopt a resolution abolishing such office and upon the expiration of the term of office of the incumbent such office shall be abolished and no successor shall be appointed.

(c) The town board of any town of the first class may establish the

office of deputy receiver of taxes and assessments and fix the salary therefor; and the town board of any such town in which such office shall have been established may abolish such office. It shall be the duty of the deputy receiver of taxes and assessments to assist the receiver of taxes and assessments in the performance of his duties. The town board of any such town wherein the office of deputy receiver of taxes and assessments has been created may also establish one additional office of deputy receiver of taxes and assessments and may fix the salary therefor and prescribe his duties and where such additional office has been established may abolish same.

(d) The town board of any town which has established the office of town comptroller pursuant to the provisions of paragraph (b) of this subdivision, may establish the office of deputy comptroller and fix the salary therefor; and the town board of any such town in which such office shall have been established may abolish such office. It shall be the duty of the deputy comptroller to assist the comptroller in the performance of his duties and if and when the comptroller is absent or is unable to perform the duties of his office for any other reason, such deputy shall have full power and authority to perform all the duties of the comptroller so long as such officer is either absent or otherwise incapable of performing his duties.

(e) The town board of any town may adopt a resolution establishing the office of director of purchasing and appoint a director of purchasing who shall hold office until the first day of January next succeeding the first biennial town election held after the time of his appointment. On the first day of January next succeeding the first biennial town election held after the time of the establishment of such office, and biennially thereafter, the town board shall appoint a director of purchasing who shall hold office for a term of two years. If a town board so determines, the duties of director of purchasing may be combined with the duties of any other town officer, official or employee except members of the town board or comptroller. The town board of any town in which the office of director of purchasing shall have been established may adopt a resolution abolishing such office and upon the expiration of the term of office of the incumbent such office shall be abolished and no successor shall be appointed.

4. No person shall be eligible to hold more than one elective town office but the town board for the purpose of consolidating offices and positions, may at any time by resolution enlarge, increase and impose further and other duties than those prescribed by law upon any elective or appointed officer or employee and fix a single compensation for the performance of all such duties. No member of the town board shall, however, be comptroller of such town.

5. The term "officer" and/or "officers" whenever used in this chapter shall include the incumbents of the offices of supervisor, council member, town clerk, justice of the peace, superintendent of highways, assessor, receiver of taxes and assessments and collector, or any of them.

5-a. The terms "council member" and "council members" whenever used in this chapter shall include all persons eligible to hold such office.

6. (a) At least one hundred fifty days prior to any biennial town election, the town board of any town in which the appointive office of town clerk shall exist, may adopt a resolution, subject to a permissive referendum, that the office of town clerk shall be an elective office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition shall have been filed within the time specified in article seven for a referendum thereon, or, if a majority of the votes cast on any such proposition submitted pursuant to the provisions of article seven be in the affirmative the office of town clerk shall thereafter be an elective office in such town, and a town clerk shall be elected at the succeeding biennial town election for the term provided by this chapter, beginning on the first day of January next succeeding such biennial town election and the term of office of the appointive town clerk for whom such successor shall be elected shall expire on said first day of January.

(b) At least one hundred fifty days prior to any biennial town election the town board of any town in which the appointive office of town superintendent of highways shall exist, may adopt a resolution,

subject to a permissive referendum that the office of town superintendent of highways shall be an elective office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition shall have been filed within the time specified in article seven for a referendum thereon, or, if a majority of the votes cast on any such proposition submitted pursuant to the provisions of article seven be in the affirmative the office of town superintendent of highways shall thereafter be an elective office in such town, and a town superintendent of highways shall be elected at the succeeding biennial town election for the term provided by this chapter, beginning on the first day of January next succeeding such biennial town election and the term of office of the appointive town superintendent of highways for whom such successor shall be elected shall expire on said first day of January.

(c) At least one hundred fifty days prior to any biennial town election, the town board of any town of the first class in which the appointive office of receiver of taxes and assessments shall exist, may adopt a resolution, subject to a permissive referendum, that the office of receiver of taxes and assessments shall be an elective office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition shall have been filed within the time specified in article seven for a referendum thereon, or, if a majority of the votes cast on any such proposition submitted pursuant to the provisions of article seven be in the affirmative the office of receiver of taxes and assessments shall thereafter be an elective office in such town, and a receiver of taxes and assessments shall be elected at the succeeding biennial town election for the term provided by this chapter, beginning on the first day of January next succeeding such biennial town election and the term of office of the appointive receiver of taxes and assessments for whom such successor shall be elected shall expire on said first day of January.

§ 22-b. Chairman of assessors; designation; duties and compensation.

The town board of any town having more than one assessor may establish the office of chairman of town assessors and at its first meeting in each year designate one of such assessors to be chairman until the first day of January next succeeding such designation. The chairman of town assessors, in addition to his regular duties, shall perform such services in connection with the assessment and taxation of property for state, county and town purposes as the town board shall direct. The town board shall fix the compensation of the person designated chairman of town assessors for all services rendered to the town, both as town assessor and as chairman.

§ 22-c. Election and term of assessors in the town of Southampton, county of Suffolk. Notwithstanding the provisions of any general, special or local law, the town board of the town of Southampton, county of Suffolk, may by resolution subject to a permissive referendum, direct that at the first biennial town election held after this act takes effect, there shall be elected three town assessors for a term of four years and two town assessors for a term of two years each to begin on the first day of January next succeeding such election. If no referendum be demanded or if a proposition therefor be adopted by referendum, the assessors of such town shall be elected at such election in the manner set forth herein. Thereafter, each assessor shall be elected for a four year term.

§ 23. Eligibility of town officers. 1. Every elective officer of the town at the time of his election and throughout his term of office, shall be an elector of the town. Every other officer of the town at the time of his appointment and throughout his term of office shall be an elector of the town except that: (a) in towns having no resident attorney, the town attorney and such counsel as may be employed need not be electors; and

(b) in towns having no resident engineer and in the towns of Mount Pleasant, Westchester county, North Castle, Westchester county, Lewisboro, Westchester county, Somers, Westchester county, Carmel,

Putnam county, and Ithaca, Tompkins county, the town engineer and such consultant engineers as may be employed need not be electors; and

(c) in the towns of North Castle, Westchester county, North Salem, Lewisboro and Pound Ridge, Westchester county, the town building inspector and such deputy building inspectors as may be employed need not be electors; and

(d) in the town of Lewisboro, Westchester county, the town wetlands inspector need not be an elector; and

(e) in the towns of Carmel and Patterson, Putnam county, the town wetlands inspector need not be an elector; and

(f) in the town of Hamlin, Monroe county, the court clerk need not be an elector; and

(g) in towns participating in a shared town justice agreement pursuant to section one hundred six-b of the uniform justice court act, a town justice may be an elector of any town participating in such an agreement.

No county treasurer, district superintendent of schools, or trustee of a school district shall be eligible to the office of supervisor.

2. Notwithstanding the provisions of subdivision one of this section, in the town of New Castle, Westchester county, and in the town of Bolivar, Allegany county, the person performing the functions of town superintendent of highways need not be an elector of such town. Provided, further, that in the town of Pound Ridge, Westchester county, the person performing the functions of town superintendent of highways and such deputies as may be employed need not be electors of such town.

3. Notwithstanding the provisions of subdivision one of this section, in the town of Mount Pleasant, Westchester county, the persons performing the functions of comptroller and building inspector need not be electors of such town.

4. Notwithstanding the provisions of subdivision one of this section, in the town of Sweden, Monroe county, the person performing the functions of court clerk need not be an elector of such town.

5. Notwithstanding the provisions of subdivision one of this section, in the town of Ogden, Monroe county, the person performing the functions of court clerk need not be an elector of such town.

6. Notwithstanding the provisions of subdivision one of this section, in the town of North East, Dutchess county, the person performing the functions of the town engineer need not be an elector of such town.

7. Notwithstanding the provisions of subdivision one of this section, in the town of Independence, Allegany county, the person performing the functions of town justice need not be an elector of such town. Provided, however, the person performing the functions of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

8. Notwithstanding the provisions of subdivision one of this section, in the town of Grove, Allegany county, the person performing the functions of town justice need not be an elector of such town. Provided, however, the person performing the functions of town justice in any other town shall be an elector of such town unless otherwise provided by an act of the state legislature.

* 9. Notwithstanding the provisions of subdivision one of this section, in the town of Birdsall, Allegany county, the person performing the functions of town justice need not be an elector of such town. Provided, however, the person performing the functions of town justice in any other town shall be an elector of such town unless otherwise provided by an act of the state legislature.

* NB There are 2 sub 9's

* 9. Notwithstanding the provisions of subdivision one of this section, in the town of West Union, Steuben county, the person performing the functions of town justice need not be an elector of such town. Provided, however, the person performing the functions of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sub 9's

* 10. Notwithstanding the provisions of subdivision one of this section, in the town of Granger, Allegany county, the person performing

the functions of town justice need not be an elector of such town. Provided, however, the person performing the functions of town justice in any other town shall be an elector of such town unless otherwise provided by an act of the state legislature.

* NB There are 3 sub 10's

* 10. Notwithstanding the provisions of subdivision one of this section, in the town of Somers, Westchester county, the person performing the functions of the town building inspector need not be an elector of such town. Provided, however, the person performing the functions of town building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sub 10's

* 10. Notwithstanding the provisions of subdivision one of this section, in the town of Pound Ridge, Westchester county, the person performing the functions of town superintendent of highways need not be an elector of such town. Provided, however, the person performing the functions of town superintendent of highways in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sub 10's

* 11. Notwithstanding the provisions of subdivision one of this section, in the town of Somers, Westchester county, the person performing the functions of the court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sub 11's

* 11. Notwithstanding the provisions of subdivision one of this section, in the town of Pound Ridge, Westchester county, the person performing the functions of town building inspector need not be an elector of such town. Provided, however, the person performing the functions of town building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sub 11's

12. Notwithstanding the provisions of subdivision one of this section, in the town of Pound Ridge, Westchester county, the person performing the functions of deputy building inspector need not be an elector of such town. Provided, however, the person performing the functions of deputy building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

13. Notwithstanding the provisions of subdivision one of this section, in the town of Ogden, Monroe county, the person performing the functions of town building inspection and code enforcement officer need not be an elector of such town. Provided, however, the person performing the functions of building inspection and code enforcement officer in any other town shall be an elector of such town, unless otherwise provided by law.

* 14. Notwithstanding the provisions of subdivision one of this section, in the town of Hamlin, Monroe county, the person performing the functions of town building inspector/code enforcement officer need not be an elector of such town. Provided, however, the person performing the functions of town building inspector/code enforcement officer in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sub 14's

* 14. Notwithstanding the provisions of subdivision one of this section, in the town of Clarkson, in the county of Monroe, the person performing the functions of building inspector need not be an elector of such town. Provided, however, the person performing the functions of building inspector in any other town shall be an elector of such town, unless otherwise provided by law.

* NB There are 2 sub 14's

* 15. Notwithstanding the provisions of subdivision one of this section, in the town of Hamlin, Monroe county, the person performing the functions of town fire marshall need not be an elector of such town. Provided, however, the person performing the functions of town fire marshall in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sub 15's

* 15. Notwithstanding the provisions of subdivision one of the

section, in the town of Clarkson, in the county of Monroe, the person performing the functions of code enforcement officer need not be an elector of such town. Provided, however, the person performing the functions of code enforcement officer in any other town shall be an elector of such town, unless otherwise provided by law.

* NB There are 2 sub 15's

16. Notwithstanding the provisions of subdivision one of this section, in the town of Andover, in the county of Allegany, the person performing the functions of town justice need not be an elector of such town. Provided, however, the person performing the functions of town justice in any other town shall be an elector of such town unless otherwise provided by law.

17. Notwithstanding the provisions of subdivision one of this section, in the town of Colesville, in the county of Broome, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town unless otherwise provided by law.

* 18. Notwithstanding the provisions of subdivision one of this section, in the town of Copake, in the county of Columbia, the persons performing the functions of court clerk and deputy court clerk need not be electors of such town. Provided, however, the persons performing the functions of court clerk and deputy court clerk in any other town shall be an elector of such town unless otherwise provided by law.

* NB There are 4 sub 18's

* 18. Notwithstanding the provisions of subdivision one of this section, in the town of Barker, in the county of Broome, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town unless otherwise provided by law.

* NB There are 4 sub 18's

* 18. Notwithstanding the provisions of subdivision one of this section, in the town of Maine, in the county of Broome, the person performing the functions of building inspector/code enforcement officer

need not be an elector of such town. Provided, however, the person performing the functions of building inspector/code enforcement in any other town shall be an elector of such town unless otherwise provided by law.

* NB There are 4 sub 18's

* 18. Notwithstanding the provisions of subdivision one of this section, in the town of Nanticoke, in the county of Broome, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town unless otherwise provided by law.

* NB There are 4 sub 18's

* 19. Notwithstanding the provisions of subdivision one of this section, in the town of Kirkwood, in the county of Broome, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town unless otherwise provided by law.

* NB There are 2 sub 19's

* 19. Notwithstanding the provisions of subdivision one of this section, in the town of Big Flats, in the county of Chemung, persons performing the functions of assessor, town attorney and director of building inspection/code enforcement office need not be an elector of such town. Provided, however, persons performing such functions or holding such offices in any other town shall be electors of such town unless otherwise provided by law.

* NB There are 2 sub 19's

20. Notwithstanding the provisions of subdivision one of this section, in the town of Maine, in the county of Broome, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town unless otherwise provided by law.

21. Notwithstanding the provisions of subdivision one of this section, in the town of Wellsville, in the county of Allegany, the persons performing the functions of town justice need not be electors of such

town. Provided, however, the persons performing the functions of town justice in any other town shall be electors of such town unless otherwise provided by law.

22. Notwithstanding the provisions of subdivision one of this section, in the town of Gerry, in the county of Chautauqua, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town, unless otherwise provided by law.

* 23. Notwithstanding the provisions of subdivision one of this section, in the town of Willing, in the county of Allegany, the persons performing the functions of town justice need not be electors of such town. Provided, however, the persons performing the functions of town justice in any other town shall be electors of such town unless otherwise provided by law.

* NB There are 3 sub 23's

* 23. Notwithstanding the provisions of subdivision one of this section, in the town of Windsor, in the county of Broome, the person holding the position of clerk to justice need not be an elector of such town. Provided, however, the person holding the position of clerk to justice in any other town shall be an elector of such town, unless otherwise provided by law.

* NB There are 3 sub 23's

* 23. Notwithstanding the provisions of subdivision one of this section, in the town of Windsor, in the county of Broome, the person performing the functions of the town building inspector and code enforcement officer need not be an elector of such town. Provided, however, the person performing the functions of town building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sub 23's

* 24. Notwithstanding the provisions of subdivision one of this section, in the town of Benson, in the county of Hamilton, the persons performing the functions of town justice need not be electors of such town. Provided, however, the persons performing the functions of town justice in any other town shall be electors of such town unless

otherwise provided by law.

* NB There are 2 sub 24's

* 24. Notwithstanding the provisions of subdivision one of this section, in the town of Genesee, in the county of Allegany, the persons performing the functions of town justice need not be electors of such town. Provided, however, the persons performing the functions of town justice in any other town shall be electors of such town unless otherwise provided by law.

* NB There are 2 sub 24's

* 25. Notwithstanding subdivision one of this section, in the town of Fishkill, Dutchess county, the person performing the function of comptroller need not be an elector of such town. Provided, however, the person performing the functions of comptroller in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sb 25's

* 25. Notwithstanding subdivision one of this section, in the town of Cambria, Niagara county, the person performing the functions of building inspector need not be an elector of such town. Provided, however, the person performing the functions of building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sb 25's

* 26. Notwithstanding the provisions of subdivision one of this section, the town of Kirkwood, in the county of Broome, the person performing the functions of town code enforcement officer/building inspector need not be an elector of such town. Provided, however, the persons performing the functions of town code enforcement officer/building inspector in any other town shall be electors of such town unless otherwise provided by law.

* NB There are 3 sb 26's

* 26. Notwithstanding the provisions of subdivision one of this section, in the town of Piercefield, in the county of St. Lawrence, the persons performing the functions of town justice need not be electors of such town. Provided, however, the persons performing the functions of town justice in any other town shall be electors of such town unless otherwise provided by law.

* NB There are 3 sb 26's

* 26. Notwithstanding the provisions of subdivision one of this section, in the town of Lyndon, in the county of Cattaraugus, the persons performing the functions of town justice need not be electors of such town. Provided, however, the persons performing the functions of town justice in any other town shall be electors of such town unless otherwise provided by law.

* NB There are 3 sb 26's

27. Notwithstanding the provisions of subdivision one of this section, the town of Kirkwood, in the county of Broome, the person performing the functions of code officer need not be an elector of such town. Provided, however, the persons performing the functions of code officer in any other town shall be electors of such town unless otherwise provided by law.

* 28. Notwithstanding subdivision one of this section, in the town of Wheatfield, Niagara county, the person performing the functions of building inspector need not be an elector of such town. Provided, however, the person performing the functions of building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 28's

* 28. Notwithstanding the provisions of subdivision one of this section, in the town of Conklin, in the county of Broome, the person performing the functions of town building inspector and code enforcement officer need not be an elector of such town. Provided, however, the person performing the functions of building inspector and code enforcement officer in any other town shall be an elector of such town, unless otherwise provided by law.

* NB There are 3 sb 28's

* 28. Notwithstanding subdivision one of this section, in the town of Wallkill, Orange county, the person performing the function of comptroller need not be an elector of such town. Provided, however, the person performing the functions of comptroller in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 28's

29. Notwithstanding the provisions of subdivision one of this section, in the town of Lewis, Lewis county, the person performing the function of town justice, need not be an elector of such town. Provided, however, the person performing the function of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* 30. Notwithstanding the provisions of subdivision one of this section, in the town of Allen, in the county of Allegany, the person performing the function of town justice, need not be an elector of such town. Provided, however, the person performing the function of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sb 30's

* 30. Notwithstanding the provisions of subdivision one of this section, in the town of LaGrange, in the county of Dutchess, the person performing the functions of the building inspector, comptroller and administrator of public works need not be an elector of such town. Provided, however, the person performing the functions of the building inspector, comptroller and administrator of public works in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sb 30's

* 31. Notwithstanding the provisions of subdivision one of this section, in the town of Wallkill, in the county of Orange, the persons performing the functions of town building inspector and code enforcement officer need not be electors of such town. Provided, however, the persons performing the functions of building inspector and code enforcement officer in any other town shall be electors of such town, unless otherwise provided by law.

* NB There are 3 sb 31's

* 31. Notwithstanding subdivision one of this section, in the town of Boylston, Oswego county, the person performing the function of town justice need not be an elector of such town. Provided, however, the person performing the function of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 31's

* 31. Notwithstanding subdivision one of this section, in the town of Somers, in the county of Westchester, the provisions of this section requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen or within which his or her official functions are required to be exercised, shall not prevent a person from holding the office of assistant court clerk of the town of Somers, provided that such person resides in the county in which such town is located or Putnam county. Provided, however, the person performing the functions of assistant court clerk in any other town shall be a resident of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 31's

* 32. Notwithstanding subdivision one of this section, in the town of Wilson, Niagara county, the person performing the function of building inspector need not be an elector of such town. Provided, however, the person performing the function of building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 32's

* 32. Notwithstanding subdivision one of this section, in the town of Sodus, Wayne County, the person performing the functions of court clerk need not be an elector of such town. Provided, however, the person performing the functions of court clerk in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 32's

* 32. Notwithstanding the provisions of subdivision one of this section, in the town of Putnam Valley, Putnam County, the persons performing the functions of the building inspector/code enforcement officer and assistant/deputy building inspector/code enforcement officer need not be electors of such town. Provided, however, the persons performing the functions of the building inspector/code enforcement officer and assistant/deputy building inspector/code enforcement officer in any other town shall be electors of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 32's

* 33. Notwithstanding subdivision one of this section, in the town of Somers, in the county of Westchester, the provisions of this section requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen or within which his or her official functions are required to be exercised, shall not prevent a person from holding the position of court attendant for the town of Somers, provided that such person resides in the county in which such town is located. Provided, however, the person performing the functions of court attendant in any other town shall be a resident of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sb 33's

* 33. Notwithstanding subdivision one of this section, in the town of Pavilion, Genesee county, the person performing the function of town superintendent of highways or town engineer need not be an elector of such town, provided that such person is an elector in an adjoining town or village within an adjoining town within the state. Provided, however, the person performing the function of town superintendent of highways or town engineer in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 2 sb 33's

34. Notwithstanding the provisions of subdivision one of this section, in the town of Angelica, in the county of Allegany, the person performing the function of town justice, need not be an elector of such town. Provided, however, the person performing the function of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

35. Notwithstanding the provisions of subdivision one of this section, in the town of Van Etten, in the county of Chemung, the person performing the function of town justice, need not be an elector of such town. Provided, however, the person performing the function of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

36. Notwithstanding the provisions of subdivision one of this section,

in the town of Chester, Orange county, the person performing the function of comptroller or building inspector need not be an elector of such town, provided that such person resides in the county in which such town is located. Provided, however, the person performing the function of comptroller or building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* 37. Notwithstanding subdivision one of this section, in the town of Pendleton, Niagara county, the person performing the function of building inspector need not be an elector of such town. Provided, however, the person performing the function of building inspector in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 37's

* 37. Notwithstanding the provisions of subdivision one of this section, in the town of Harrison, in the county of Westchester, the person performing the function of assistant court clerk or fire marshal, need not be an elector of such town. Provided, however, the person performing the function of assistant court clerk or fire marshal in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 37's

* 37. Notwithstanding the provisions of subdivision one of this section, in the town of Montour, in the county of Schuyler, the person performing the function of town justice, need not be an elector of such town. Provided, however, the person performing the function of town justice in any other town shall be an elector of such town, unless otherwise provided by an act of the state legislature.

* NB There are 3 sb 37's

*** § 23-a. Residence requirement for comptroller of the town of Cortlandt.** Notwithstanding any provisions of this chapter or any other special, general or local law to the contrary, the town board of the town of Cortlandt in Westchester county, may, by resolution, provide that the comptroller of the town of Cortlandt need not be a resident of said town, however he shall be a resident of New York state.

* NB Expired December 31, 1979

§ 24. Terms of office. All elective officers other than town council members, town justices, receivers of taxes and assessors shall hold their respective offices for two years. The terms of office of the town council members first elected after this chapter shall take effect and of the town council members first elected in a town which shall have changed its classification from that of a town of the second class to that of a town of the first class, shall be two years each for two town council members and four years each for two town council members, and thereafter at each biennial town election there shall be elected two town council members for terms of four years each.

The terms of office of the town justices and elective receivers of taxes and assessments shall be four years. The term of office of the assessor shall be six years, unless the town retains a board of assessors, in which case the term for each shall be four years with no more than two assessors to be elected at any biennial election after December thirty-first, nineteen hundred eighty-one except when the unexpired balance of term is being filled in which case three assessors may be elected; when appointed, the term of office shall be as provided by section three hundred ten of the real property tax law. The term of each elective officer shall begin on the first day of January next succeeding the election at which he was elected. The town clerk, the town superintendent of highways, the receiver of taxes and assessments, the town engineer and the town attorney, whenever appointed, shall hold their respective offices until the first day of January next succeeding the first biennial town election held after the time of their appointment. All other appointed officers and employees shall hold their respective offices and positions at the pleasure of the town board, except as otherwise provided by law.

§ 24-a. Terms of office of elective officers. 1. Notwithstanding the provisions of section twenty-four of this chapter or any other general law, and at least one hundred fifty days prior to any biennial town

election, the town board of any town may adopt a resolution to provide that the term of office of each and any elective town official thereafter elected shall be four years, and such resolution shall be submitted to the qualified electors of the town for their approval or disapproval at the next biennial town election. No such resolution shall become effective until approved by the affirmative vote of the majority of the qualified electors of the town voting on such proposition. The submission of such proposition shall be as provided in article seven of this chapter for a referendum thereunder in like manner as if a petition therefor had been filed in accordance with the provisions of this chapter, except that such proposition shall be submitted only at a biennial town election as hereinbefore provided. If the town board shall have adopted such a resolution and if a majority of the votes cast on any such proposition when submitted as herein provided shall be in the affirmative, the terms of office of those town officers included in such proposition and thereafter elected shall be for a period of four years.

2. In those towns where the term of office of elected officials has been set at four years pursuant to subdivision one of this section, and at least one hundred fifty days prior to any biennial town election, the town board may adopt a resolution to provide that the term of office of each and any elective town official, whose term of office was changed to four years as provided in subdivision one of this section, thereafter elected shall be two years, and such resolution shall be submitted to the qualified electors of the town for their approval or disapproval at the next biennial town election. No such resolution shall become effective until approved by the affirmative vote of the majority of the qualified electors of the town voting on such proposition. The submission of such proposition shall be as provided in article seven of this chapter for a referendum thereunder in like manner as if a petition therefor had been filed in accordance with the provisions of this chapter, except that such proposition shall be submitted only at a biennial town election as hereinbefore provided. If the town board shall have adopted such a resolution and if a majority of the votes cast on any such proposition when submitted as herein provided shall be in the affirmative, the terms of office of those town officers included in such proposition and thereafter elected shall be for a period of two years.

§ 24-b. Election of council members and town justices in the town of Pawling. Notwithstanding the provisions of section twenty-four of this article or any other general or special law, the town board of the town of Pawling in Dutchess county, may by a resolution adopted at least ninety days prior to the general election to be held in November of nineteen hundred sixty-nine, provide that at the general election to be held in November of nineteen hundred sixty-nine, one town council member be elected for a term of two years and one town council member be elected for a term of four years and thereafter at each biennial town election there shall be elected one town council member for a term of four years. Such resolution may also provide that at the general election to be held in November of nineteen hundred sixty-nine, one town justice be elected for a term of four years and thereafter at each biennial town election there shall be elected one town justice for a term of four years.

§ 25. Oaths of office and undertaking. Before he or she enters on the duties of the office, and within thirty days after the commencement of the term of office for which he or she is chosen, every town officer shall take and subscribe before an officer authorized by law to administer oaths in his or her county, the constitutional oath of office and such other oath as may be required by law, which shall be administered and certified by the officer taking the same without compensation, and such oath shall be filed in the office of the town clerk. Each town justice shall also file such oath of office as provided pursuant to section one hundred four of the uniform justice court act with the county clerk and the office of court administration.

Each supervisor, town clerk, collector, receiver of taxes and assessments, town justice, constable, town superintendent of highways, and such other officers and employees as the town board may require, before entering upon the duties of his or her office, and within thirty days after commencement of the term for which he or she is chosen, shall execute and file in the office of the clerk of the town, an official

undertaking, conditioned for the faithful performance of his or her duties, in such form, in such sum and with such sureties as the town board shall direct and approve and such approval shall be indicated upon such undertaking. Unless the town board of his or her town has procured a blanket undertaking pursuant to subdivision two of section eleven of the public officers law that covers him or her, each town justice shall also file such undertaking as provided by section one hundred four of the uniform justice court act with the county clerk. Such undertaking shall not be recorded unless the town board of the town shall adopt a resolution so requiring and shall indicate such requirement upon such undertaking. The undertaking of the supervisor shall be further conditioned that he or she will well and truly keep, pay over and account for all moneys and property, including any special district funds and the local school fund, if any, belonging to his town and coming into his or her hands as such supervisor. The undertaking of the receiver of taxes and assessments shall be further conditioned that he or she will well and truly keep, pay over and account for all moneys and property coming into his or her hands as such receiver of taxes and assessments, including all school district taxes, and such undertaking shall be in lieu of any other bond or undertaking otherwise required by law in the collection of such school district taxes and the proper accounting therefor, except the undertaking required by sections twenty-five hundred six and twenty-five hundred twenty-seven of the education law, and the trustees of every school district for which such receiver of taxes and assessments shall act as collector shall have and may exercise the same powers and remedies with respect to such undertakings as is given them with respect to the official bond of the collector by the provisions of article forty-three of the education law or by the provisions of any other general or special law. The town board at any time may require any such officer or employee to file a new official undertaking for such sum and with such sureties as the board shall approve. In addition, the town board may require any town officer depositing funds or moneys of the town to file a depository bond indemnifying the town against any loss thereof. The town board may by resolution determine that any such undertaking or bond shall be executed by a surety company authorized to transact business in the state of New York and the expense thereof shall be a charge against the town. The

filing of such oath and undertaking, when required, shall be deemed an acceptance of the office. The town clerk shall notify the town board in writing of the expiration of any undertaking or bond filed in his or her office pursuant to this section, at least thirty and not more than sixty days prior to the date of expiration thereof.

A neglect or an omission to take and file such oath, or to execute and file such undertaking within the time prescribed herein, except in the case of town justices, shall be deemed a refusal to serve and the office may be filled as in case of vacancy. The undertaking of a town officer provided by this section shall be in addition to any undertaking otherwise required by law.

§ 25-a. Fingerprints of persons before appointment as town police officers, or as constables possessing powers in criminal matters. No person shall be appointed or reappointed a member of the police department, or a special police officer, or a constable not limited to powers and duties in civil actions and proceedings only, in any town, who shall not previously, for the purposes of this section, have submitted fingerprints in the form and manner prescribed by the division of criminal justice services to the town board or other board or officer of the town empowered by law to make such appointment or reappointment, and it shall be the duty of such board or officer, before making such appointment or reappointment, to compare or cause to be compared such fingerprints with fingerprints filed with the division of criminal justice services; provided, however, that in any case where the fingerprints of any such person shall once have been submitted pursuant to this section and are on file with the board empowered to make the appointment or reappointment, no new submission thereof shall be required, nor shall such board be required to make or cause to be made such comparison if such comparison shall have been made previously pursuant to this section and certification thereof by such department is on file with such board.

§ 26. Resignation of town officers. Any town officer may resign to the

town clerk in the manner provided by section thirty-one of the public officers law.

§ 27. Compensation of town officers and employees. 1. The town board of each town shall fix, from time to time, the salaries of all officers and employees of said town, whether elected or appointed, and determine when the same shall be payable. The town board shall not fix the salaries of the members of the town board, an elected town clerk or an elected town superintendent of highways at an amount in excess of the amounts respectively specified in the notice of hearing on the preliminary budget published pursuant to section one hundred eight of this chapter. However, the annual salary of any such elected officer may be increased, for not more than one fiscal year, in excess of the amount specified in the notice of hearing on the preliminary budget local law adopted pursuant to the municipal home rule law. Salaries shall be in lieu of all fees, charges or compensation for all services rendered to the town or any district or subdivision thereof, pursuant to law, except that the supervisor shall not be required to account for and pay over such fees, salary or other compensation that he or she may receive or be entitled to from the county in which he or she is elected, for services rendered by him or her as a member of the board of supervisors. No town officer or employee shall retain any fees or moneys received by him or her in connection with his or her office but such fees or money shall be the property of the town and be paid to the supervisor not later than the fifteenth day of each month following the receipt thereof, excepting such fees and moneys the application and payment of which are otherwise provided for by law. Every officer or employee, except a town justice, is hereby required to submit monthly to the supervisor a verified statement of all moneys received by him or her and to pay such moneys to the supervisor who shall deliver his or her receipt therefor. Unless such verified statement and payment be made, such officer or employee shall not be paid any further portion of his or her salary until a report be submitted of any moneys paid as herein provided. The said provisions shall not affect a receiver of taxes and assessments who deposits the money collected directly to the credit of the supervisor and whose monthly report is equivalent to a receipt from

the supervisor. Provisions of this subdivision shall not preclude the town from hiring laborers, clerical assistants and stenographers, and compensating them upon the hourly or daily basis. Notwithstanding any provision of the penal law, the civil practice law and rules, the criminal procedure law, the uniform justice court act, or any other general, special or local law, no police officer, special police officer or constable of any such town shall retain for his or her own use fees, per diem or other compensation received by him or her from the state, the county, or any other municipality, or a private corporation or a person, in or for the performance of the duties of his or her office, whether such duties be of an administrative, legislative, judicial or other nature, but all such fees and moneys so received by him or her shall be the property of the town of which he or she is an officer and be paid to the supervisor not later than the fifteenth day of each month following the receipt thereof. No town justice of any town shall retain for his or her own use fees, per diem or other compensation received by him or her from the state, the county, or any other municipality or a private corporation or a person, in or for the performance of the duties of his or her office, whether such duties be of an administrative, legislative, judicial, or other nature, but all such fees and moneys so received shall, unless otherwise provided by law, be the property of the town of which he or she is an officer and shall be paid by such justice to the state comptroller within the first ten days of the month following collection. Each such payment shall be accompanied by a true and complete report in such form and detail as the comptroller shall prescribe. In the event that a justice shall not receive any such fees and moneys during any month he or she shall report this fact to the state comptroller within the first ten days of the succeeding month. Upon receipt of notice from the state comptroller that a justice has not properly reported or properly accounted for any moneys received by such justice, it shall be unlawful for the town to make any further payment of compensation to such justice until receipt of a notice from the comptroller that a proper accounting has been made. In all towns the salaries of all town justices shall be equal except that the town board may determine by a majority vote to pay salaries in different amounts. Fees payable by virtue of the civil practice law and rules and section sixty-eight-a of the public officers law, for taking oaths and

acknowledgment, shall not be deemed to be fees within the meaning of this section, but may be retained, or the payment thereof waived, by the officer taking the same.

2. Inspectors of election, ballot clerks, poll clerks and election coordinators shall receive such an amount per day for their services on days of registration, election and primary elections, as the town board may determine by resolution. Such election officers shall receive compensation for one day only for all services rendered on the day of election and in canvassing the votes thereafter, and in completing the returns, of either an election or of a primary election.

3. Notwithstanding the provisions of subdivision one of this section, the town board of any town which shall not have established a police department, may adopt a resolution determining that the police officers of such town, including special police officers and constables, shall be compensated by annual salary or by the week, day or hour for services actually and necessarily performed by them in all matters other than civil actions and proceedings, and that such police officers shall be entitled to collect and retain for their own use, the fees, mileage, poundage and other compensation allowed by law for services in civil actions and proceedings.

4. Notwithstanding the provisions of subdivision one of this section, the budget officer may receive, in addition to any other compensation, a salary as budget officer to be fixed by the town board.

§ 28. Power to administer oaths. Any town officer may administer any necessary oath in any matter or proceeding lawfully before him, or in connection with any paper to be filed with him as such officer.

§ 29. Powers and duties of supervisor. Except where powers or duties specified herein are devolved upon the town comptroller pursuant to section thirty-four of this chapter, the supervisor of each town.

1. Shall act as treasurer thereof and shall demand, collect, receive and have the care and custody of moneys belonging to or due the town from every source, except as otherwise provided by law. Except as otherwise provided in articles eleven and thirteen, he shall also act as treasurer and disbursing officer for every special district therein.

2. Within ten days after their receipt, shall deposit and secure in his name as supervisor, all such moneys in the manner provided by section ten of the general municipal law.

3. Shall disburse such moneys only by checks payable to the person or persons entitled thereto, which checks shall, if the town board requires such countersignature, be countersigned by the town clerk, or by the comptroller in towns where the office of town comptroller has been established. When authorized by resolution of the town board, such checks may be signed with the facsimile signature of the supervisor or other town officer whose signature is required, as reproduced by a machine or device commonly known as a checksigner. By resolution duly adopted, the town board may determine to enter into a contract to provide for the deposit of the periodic payroll of the town in a bank or trust company for disbursal by it in accordance with provisions of section ninety-six-b of the banking law.

4. Shall keep an accurate and complete account of the receipt and disbursement of all moneys which shall come into his hands by virtue of his office, in books of account in the form prescribed by the state department of audit and control for all expenditures under the highway law and in books of account provided by the town for all other expenditures. Such books of account shall be public records, open and available for inspection at all reasonable hours of the day, and, upon the expiration of his term, shall be filed in the office of the town clerk.

7. Shall pay fixed salaries, the principal of or interest on indebtedness, amounts becoming due upon lawful contracts for periods exceeding one year, and compensation for services of officers or employees regularly engaged by the town at agreed wages by the hour,

day, week, month or year without prior audit.

8. Shall prosecute, in the name of the town, for all penalties given by law to such town for its use and for all moneys or property due the town.

9. Shall cause a survey to be made of the bounds of his town, whenever required by the state department of transportation, and transmit a map and description thereof to such department within sixty days thereafter. The expense of such survey and map shall be defrayed by the several towns whose bounds either wholly, or in part, shall be described thereby; such expense to be apportioned by the board of supervisors of the county.

10. Shall prepare and file with the town clerk within thirty days after the expiration of each fiscal year, an annual financial report accounting for all moneys received and disbursed by him, together with the certificate, or certificates, of the bank or trust company where town moneys are deposited, showing the amount of such moneys on deposit with said bank or trust company, and cause a certified copy of such report to be published in the official newspaper, and in such other newspapers, if any, as the town board may require. In addition thereto, if and whenever required, such supervisor shall submit to the other members of the town board at the time of filing such report all vouchers, cancelled checks or check images as authorized by section ninety-nine-b of the general municipal law, check stubs, ledgers, cash books, journals, and financial and accounting records of every sort required to substantiate the accuracy and completeness of such report.

10-a. In lieu of preparing the report required by subdivision ten of this section, the town board may determine, by resolution, that the supervisor shall submit to the town clerk, within the time period prescribed in section thirty of the general municipal law, a copy of the report to the state comptroller required by section thirty of the general municipal law, providing, however, that if the time for the filing of the annual report has been extended by the state comptroller as provided in the said statute, then the time for submitting a copy of

the report to the town clerk similarly shall be extended. The town clerk shall cause either a summary of such report to be published within ten days after receipt thereof in a form approved by the state comptroller or a notice that a copy of such report is on file in the town clerk's office and is available for public inspection and copying, in the official newspaper and in such other newspapers as the town board may direct.

11. Shall lease, sell and convey in the name of the town, property owned by it, whenever and in the manner authorized by the provisions of this chapter or any other general or special law and shall execute and deliver, in the name of the town, grants of easements or other rights in lands or other property owned by the town, whenever so directed by the town board.

12. In towns other than those mentioned in section 9-1107 of the environmental conservation law, and other than those included in a forest fire district as defined in subdivision two of section 9-1109 of the environmental conservation law, shall be superintendent of fires of his town and charged with the duty of preventing and extinguishing forest fires. In such capacity, he shall also be charged with the duty of preventing and extinguishing muck fires. He shall have the power to employ persons to act as forest rangers and fire wardens in preventing and fighting forest and muck fires and to employ necessary assistants therefor, and shall possess, for both such purposes, all the power and authority conferred upon the department of environmental conservation, district forest ranger, forest ranger and fire warden under subdivisions one, two, three, four, five and twelve of section 9-1103, subdivision two of section 9-1111 and section 71-0705 of the environmental conservation law with respect to forest fires and forest fire protection. Any person summoned to fight forest or muck fires who is physically able and refuses to assist, shall be liable to a penalty of twenty dollars. The town board of each town shall designate one of its members to act as such superintendent of fires for the ensuing year in case of absence of the supervisor. The town board shall fix the compensation of all forest rangers, fire wardens, and assistants employed under the provisions of this section, and all expenses incurred

under the provisions of this section shall be a charge upon and paid by the town.

13. Shall notify the state department of transportation, in writing, regarding the construction, reconstruction or repair by any person or corporation, or political subdivision of the state within his town, of any dam or other structure for impounding water, and of any dock, pier or wharf, or other structure used as a landing place. This notice shall be given within ten days after the commencement of such work. This subdivision shall not apply to a dam where the area draining into the pond formed thereby does not exceed one square mile, unless the dam is more than ten feet in height above the natural bed of the stream at any point or unless the quantity of water which the dam impounds exceeds one million gallons.

14. Shall attend the annual meeting of the board of supervisors of the county, and every regular, adjourned or special meeting thereof of which he shall receive notice.

15. In towns of the first class, may designate a bookkeeper or confidential secretary, or both. In towns of the second class, the town board may by resolution authorize the supervisor of the town to designate a bookkeeper or confidential secretary, or both. A person so designated by the supervisor, shall receive a reasonable compensation for his services, to be fixed by the town board and such compensation shall be a town charge.

16. Shall have and exercise any other power or duty expressly conferred or imposed upon him by law and such powers and duties of administration and supervision of town or special or improvement district functions as shall be provided by resolution of the town board, to be performed on behalf of such board.

§ 30. Powers and duties of town clerk. The town clerk of each town: 1. Shall have the custody of all the records, books and papers of the town. He shall attend all meetings of the town board, act as clerk thereof,

and keep a complete and accurate record of the proceedings of each meeting, and of all propositions adopted pursuant to this chapter. Immediately after adoption he shall enter into a book to be known as the "ordinance book" a copy of every ordinance adopted by the town board, specifying the date of adoption thereof. In addition, he shall act as secretary of the board of commissioners of any improvement district when so designated by such board of commissioners. He shall keep a complete and accurate record in his office as town clerk of all proceedings of every board of commissioners of improvement districts in said town. The town clerk shall record all deeds of conveyances in the office of the clerk of the county in which the property is located and thereafter file the same in the town clerk's office. The cost and necessary expenses incurred in the recording of such deeds in the county clerk's office shall be a town charge.

1-a. Shall enter daily in a suitable book or books a record of all moneys received by him, and shall deposit all such moneys not later than the third business day after the total thereof exceeds the sum of two hundred fifty dollars.

2. He shall file all certificates or oaths and other papers required by law to be filed in his office.

3. He or she shall certify to the county clerk within twenty days after their appointment, the names of all appointive town officers, except inspectors of election, with their respective post-office addresses, the date of their appointment and expiration of term of office. He or she shall also on or before the tenth day of January in each year, file a certificate with the department of audit and control specifying the names of all town officers, whether elected or appointed, excepting inspectors of election, and file a certificate with the commissioner of taxation and finance specifying the names of all town assessors, with their respective post-office addresses, the date of their appointment or election and the expiration of term of office.

4. Whenever a vacancy shall occur or exist in any town office, the town clerk shall immediately notify the county clerk of such vacancy,

specifying the name of the officer, the office in which the vacancy occurred and the date when the same became vacant. Within five days after such vacancy is filled, the town clerk shall file with the county clerk and the department of audit and control and, if the vacancy was in the office of assessor, with the commissioner of taxation and finance, a certificate specifying the name and address of the person filling the vacancy, together with the term for which elected or appointed. In the case of a person appointed to fill a vacancy in the office of town justice, the town clerk shall file a duplicate certificate with the chief administrator of the courts. If a vacancy shall occur or exist in the office of town clerk, the supervisor shall notify the county clerk of such vacancy and the date when such office became vacant.

5. He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county in each year, certified copies of all propositions adopted by the town since the last annual meeting of the board of supervisors.

6. At the expense of the town he or she shall procure and affix on or near the main entrance to his or her office a sign-board with the name of the town followed by the words "town clerk's office" in plain characters thereon with sufficient space immediately below for posting thereon the legal notices of the town. Such sign-board and, in any town that maintains a regularly and routinely updated website and utilizes a high speed internet connection, an electronic version of such sign-board shall be one of the public places upon which any legal notice may be posted. Towns which maintain a regularly and routinely updated website and utilizes a high speed internet connection shall, to the extent practicable, maintain an electronic version of such sign-board and shall post a link to the electronic version of the sign-board on its homepage. An electronic version of such sign-board shall include a town website page designed or intended to provide electronic access to public notices. A town shall not be required to maintain an electronic sign-board pursuant to this subdivision should the town incur additional costs in order to comply.

7. He shall issue all licenses or permits, whenever and in the manner

required by this chapter or by any other law and collect all fees therefor, except as provided in section one hundred thirty-seven of this chapter.

8-a. Any town in the county of Ontario may, by resolution of the town board and upon agreement with the board of supervisors of such county, authorize the town clerk of such town to provide for the care and protection of any road dedication books in his possession by placing them in the custody of the county clerk for filing and storage in a safe place and for such purpose the board of supervisors of Ontario county is hereby authorized to make such provision as may be necessary for the care and preservation of such road dedication books in the office of such county clerk.

9. Except in towns where the office of town comptroller has been created the town clerk, when required by resolution of its town board, shall countersign all checks required to be signed by the supervisor.

10. (a) The town clerk may appoint, and at his or her pleasure remove, a first deputy town clerk, who shall serve without compensation from the town unless otherwise provided by the town board. Such compensation may be in addition to any other compensation he or she may receive as a town officer, town official or town employee. The town clerk shall establish the duties and responsibilities of the first deputy town clerk and such first deputy town clerk shall possess the powers and perform the duties of the town clerk during the absence or inability to act of the town clerk, or during a vacancy in the office of town clerk. Before he or she shall perform any function as such, the first deputy town clerk shall take and file the constitutional oath of office and execute and file an official undertaking in the manner prescribed in section twenty-five of this article.

In addition, the town clerk may appoint, and at his or her pleasure remove, up to two additional deputy town clerks whose duties and responsibilities shall be established by the town board. The town board, in its discretion, may delegate to the town clerk the authority to establish the duties of the additional deputy town clerks. Any such

additional deputy town clerks shall serve without compensation from the town, unless otherwise provided by the town board. Such compensation may be in addition to any other compensation he or she may receive as a town officer, town official or town employee. Before he or she shall perform any function as such, the additional deputy town clerk shall take and file the constitutional oath of office and if required by the town board, execute and file an official undertaking in the manner prescribed in section twenty-five of this article.

(b) In the event that the town clerk is absent or unable to act and there is no duly appointed and qualified first deputy town clerk present and able to act, the town board may appoint as deputy town clerk any person other than a member of the town board; provided, however, that such person be qualified as provided in section three of the public officers law and section twenty-three of this article. If the town board shall provide compensation for such deputy town clerk, such compensation may be in addition to any other compensation he or she may receive as a town officer, town official or town employee. Such deputy town clerk shall hold office at the pleasure of the town board and in no event for longer than the duration of such absence or incapacity of the town clerk.

10-a. Where a town has not established the office of receiver of taxes and assessments, the town clerk shall collect water rates and sewer rents unless the town board has designated another officer or employee to make such collections.

11. The town clerk shall have such additional powers and perform such additional duties as are or hereafter may be conferred or imposed upon him by law, and such further duties as the town board may determine, not inconsistent with law.

§ 31. Powers and duties of town justices; requirements; restriction.

1. The town justice shall have such jurisdiction in criminal and civil matters and in special proceedings, as is now or may hereafter be conferred by law. Each such justice shall:

(a) Keep or cause to be kept the records and dockets required by the

uniform justice court act. No town justice shall receive or disburse any moneys unless he shall furnish or receive a proper receipt therefor, or make a memorandum or record of such transaction, in such form and detail as the state comptroller shall prescribe.

(b) At least annually and as often as may be required, submit his dockets to the members of the town board for examination and audit.

2. No town justice selected for a term of office commencing on or after September first, nineteen hundred sixty-seven, except one who has been admitted to practice law in this state, shall assume the functions of his office unless he has filed in the office of the town clerk a certificate of completion of a course of training prescribed by the administrative board of the judicial conference. The administrative board may issue a temporary certificate enabling a justice to assume the functions of his office pending completion of the earliest such course available thereafter. Such certificates shall be in a form, and subject to terms and conditions, prescribed by the administrative board.

3. Notwithstanding any other law, actual and necessary expenses incurred by a justice or justice elect in attending a course of training required of him before he can assume the functions of his office shall be a charge against the town.

4. No town justice selected for a term of office commencing on or after July first, nineteen hundred seventy-five, shall engage in or accept any employment as a "police officer" or a "peace officer" as those terms are defined in the criminal procedure law.

5. A person who has been convicted of a felony pursuant to the laws of this state or who has been convicted in federal court or in another state for a crime or offense that would constitute a felony under the laws of this state shall be permanently ineligible to be a candidate for town justice or to be appointed or continue to hold such office.

§ 32. Powers and duties of town superintendent of highways and deputy superintendent. 1. The town superintendent of highways shall have such

powers and shall perform such duties as are or hereafter may be conferred or imposed upon him by law, and such further duties as the town board may determine not inconsistent with law.

2. The town board of any town may at any time establish the office of deputy town superintendent of highways. The deputy town superintendent of highways shall be appointed by and serve at the pleasure of the town superintendent of highways. If the town superintendent of highways shall fail to appoint such deputy within five days after the establishment of the office of deputy or within five days after a vacancy occurs in the office of deputy, the town board shall have power to appoint such deputy town superintendent of highways. During the absence or inability of the town superintendent of highways to act, such deputy shall act and be vested with all the powers and duties of the town superintendent as provided by law. Before such deputy shall perform any power or duty of the office of superintendent such deputy town superintendent of highways shall take and file the constitutional oath of office and execute and file an official undertaking to be approved by the town board. The town board shall fix the compensation to be received by such deputy.

§ 32-a. Entry by town engineer on private lands. The town engineer and any deputy, assistant or employee of the town engineer's office designated by him may enter upon any lands, waters or waterways, public or private, within the town, without hindrance, for the purpose of making surveys, examinations or investigations, including the making of test pits and test borings, necessary or convenient in the exercise of performance of any of the other powers or duties conferred or imposed on the town engineer, provided that any test pits or borings made hereunder shall be refilled and the real property so disturbed shall be restored to its previous condition.

§ 33. Powers and duties of assessors. 1. The assessor or assessors shall have such powers and shall perform such duties as are, or hereafter may be, conferred or imposed by law.

When required by the town board in a town of the first class, the assessor or assessors shall keep such office hours for public convenience as the town board shall determine.

§ 34. Powers and duties of town comptroller. 1. In any town in which the office of town comptroller shall have been established and a town comptroller shall have been appointed and shall have qualified, the powers of the town board of that town with respect to auditing, allowing or rejecting all accounts, charges, claims or demands against the town or the improvement districts thereof and with respect to the examining, auditing and certification of accounts and receipts of town officers, and making provision for preparing and publishing or posting lists of all such accounts, charges, claims or demands after the audit or rejection thereof, including the powers conferred and duties imposed upon the town board in relation to auditing and approving certain claims pursuant to sections two hundred eighty-four and two hundred eighty-five of the highway law, shall devolve upon and thereafter be exercised by such town comptroller, during the continuance of such office; and with respect to the powers so conferred and the duties so imposed he shall be the town board of the town during the continuance of such office. The comptroller, when required by resolution of the town board, shall countersign all checks required to be signed by the supervisor. The comptroller shall annually audit the fiscal affairs of each improvement district in said town operating under article thirteen of this chapter and report thereon in writing to the town board.

2. In any town in which the office of town comptroller shall have been established and a town comptroller shall have been appointed and shall have qualified, the town board may by ordinance provide that either or both of the following powers conferred and duties imposed upon the supervisor under section one hundred twenty-five of this chapter shall devolve upon and be exercised by such town comptroller during the continuance of such office: (a) the keeping of separate appropriation accounts and preventing funds or appropriation accounts from being overdrawn; or (b) the drawing upon funds or appropriations, provided the counter-signature of the supervisor shall be required. The town

comptroller shall furnish to the supervisor such information and data as the supervisor may require for the purpose of enabling him to exercise his powers and perform his duties or make reports required by law.

§ 35. Powers and duties of collector. 1. The collector of taxes shall be subject to the duties and shall have and possess, and shall exercise in the manner and within the time prescribed by law, all the rights, powers, authority, and jurisdiction conferred upon him by law. The county clerk, in whose office the collector's undertaking shall have been filed, shall make an entry thereof in a book to be provided for the purpose in the same manner as judgments are entered of record; and every such undertaking, except where the surety thereon is a fidelity or surety company duly authorized to transact business and act as such surety within this state, shall be a lien on all the real estate held by the collector or his sureties within the county at the time of the filing thereof, and shall continue to be such lien, until its condition, together with all costs and charges which may accrue by the prosecution thereof shall be fully satisfied. Upon a settlement in full between the county treasurer and the collector, a certificate of payment shall be executed in duplicate by the county treasurer, one copy to be delivered to the collector and one copy to be filed by the county treasurer in the office of the county clerk, and said county clerk shall then enter a satisfaction thereof in the book in which the filing of said undertaking is entered and opposite said entry of filing. The collector shall within twenty-four hours after receiving the same deposit and secure all sums of money received and collected by him in the manner provided by section ten of the general municipal law. All tax moneys so deposited shall be paid to the supervisor at least once in each week or at more frequent times as may be specified by resolution of the town board, provided however, that after payment to the supervisor in full of all moneys payable to him pursuant to any warrant for the collection of taxes, the residue, if any, shall be paid to the county treasurer not later than the fifteenth day of each month following the receipt thereof. The town board may require that such moneys be deposited in an interest bearing account. The interest earned on tax moneys so deposited, collected on behalf of the county, shall belong to such county unless the legislative

body of such county has, by resolution, authorized the town to credit all or a percentage of such interest to the general fund of the town. Upon adoption of such resolution, the clerk of the county legislative body shall notify, in writing, all town supervisors of the percentage of interest the town is authorized to credit to its general fund. The provisions of this subdivision regarding the deposit of moneys and crediting of interest shall be controlling and shall apply to each town, notwithstanding any inconsistent provisions of any general, special or local law.

2. The collector of taxes may appoint, and at his pleasure remove, a deputy who shall serve without compensation from the town unless otherwise provided by the town board. Such appointment shall be made by an instrument in writing which shall become effective upon the filing thereof in the office of the town clerk. Such deputy collector shall possess the powers and perform the duties of the collector of taxes during the absence or inability to act of the tax collector, or during a vacancy in the office of collector. The collector shall be liable for the faithful performance of his duties by a deputy designated by him, except where such deputy is acting during a vacancy in the office of collector. Whenever a vacancy shall occur in the office of collector, the town board shall require the deputy collector to file in the office of the clerk of the county in which the town is located, an official undertaking conditioned for the faithful performance of his duties, in such form, in such sum and with such sureties as the town board shall direct and approve. Such approval shall be indicated upon such undertaking. The town board may by resolution determine that any such undertaking or bond shall be executed by a surety company authorized to transact business in the state of New York and the expense thereof shall be a charge against the town.

§ 36. Collection of taxes by town clerk. 1. In any town of the second class in which the office of tax collector or receiver of taxes exists, the town board thereof may by resolution duly adopted at least one hundred fifty days prior to any biennial town election, determine that said office be abolished, same to take effect at the expiration of the

term of office to which the incumbent was elected or appointed; and no such tax collector or town receiver of taxes shall be elected at any biennial town election held not less than one hundred fifty days thereafter. Upon the expiration of the term of office of such tax collector or town receiver of taxes as provided herein, he shall surrender and deliver to the town clerk of said town all assessment rolls, books, papers, writings and all other documents and property in his possession as such officer. In all towns where the office of tax collector or receiver of taxes has been abolished, it shall be the duty of such town clerk to collect and receive all state, county and town taxes and assessments that may be levied in such town and the town clerk shall have all the powers and be subject to all the duties of a collector with respect to the collection of such taxes, the deposit of receipts and the return of unpaid taxes, as provided by subdivision one of section thirty-five of this chapter.

2. The board of supervisors of the county in which such town is situate shall issue its warrant to such clerk for the collection of taxes in such town, in the same manner as warrants are issued to collectors, and all other warrants or authorizations for the collection of taxes, assessments or other moneys upon the taxable property of said town.

§ 37. Powers and duties of receiver of taxes and assessments. 1. The receiver of taxes and assessments, if the office be elective, shall hold no other elective public office. Except as otherwise provided in section twenty-five hundred six of the education law, he shall have and possess and exercise in the manner and within the time prescribed by law all the rights, powers, authority and jurisdiction possessed and exercised by the town tax collector and the school district collectors in the town of which he is receiver of taxes and assessments and he shall be subject to all of the duties of such officers. Except as otherwise provided in section twenty-five hundred six of the education law, and unless there has been an agreement between the town board and the school board to the contrary, it shall be the duty of such receiver of taxes and assessments to receive and collect all state, county, town and school taxes, and all

assessments that may be levied or assessed in the town, and all fees thereon prescribed by law, including all other moneys provided by law to be paid to the town tax collector or school district collectors, except that the town board of a town may by resolution authorize the receiver of taxes and assessments to receive taxes for thirty days after the first day specified in the notice for the payment of such taxes, at a charge of not more than one per centum upon such taxes or without additional charge, and except that the town board of a town may by resolution authorize the receiver of taxes and assessments to receive taxes heretofore payable to school district collectors after the expiration of such thirty day period with such fee, not more than five per centum upon such taxes, as the town board shall determine and specify in such resolution. Upon the passage of such resolution, the town board shall determine and fix the fee to be collected upon such taxes. Except as otherwise provided by law, the receiver of taxes shall receive and collect all water rates, sewer rentals, permit fees and other fees and charges payable to said town. Except as otherwise provided by this section, all fees, interest or penalties collected by him upon any tax or assessment heretofore payable to the town tax collector, or school district collectors, shall belong to the town. Except as otherwise permitted by section fifteen hundred eighty-eight of the real property tax law, such receiver shall enter daily in a suitable book or books a record of all moneys received by him and such book or books shall be public records and shall be open during office hours to public inspection. Within twenty-four hours after receiving the same, he shall deposit and secure all sums of money received and collected by him to the credit of the supervisor in or with a bank or trust company designated by the town board and notify the supervisor thereof, except that all school district moneys collected shall be deposited to the credit of the school district in such bank or banks as may be designated from time to time by the boards of education or trustees of the school districts, and except that after payment to the supervisor in full of all moneys payable to him pursuant to any warrant for the collection of taxes, the residue, if any, shall be deposited to the credit of the receiver of taxes and assessments, in such banks or trust companies as have been designated by the town board in the type of account specified by such board and such moneys shall be paid to the county treasurer not

later than the fifteenth day of each month following the receipt thereof, and upon expiration of such warrant the receiver shall comply with the provisions of section nine hundred forty of the real property tax law. In lieu of the aforesaid immediate deposit of school district moneys to the credit of the school districts, the receiver of taxes and assessments may deposit such school district moneys to his own credit as receiver of taxes and assessments in the same account or accounts which he uses for depositing and disbursing county tax moneys; provided that, within five days after so depositing such school district moneys, he shall make appropriate distribution thereof by depositing appropriate sums to the credit of the school district as hereinbefore provided. Notwithstanding the foregoing provisions of this section, the town board, by resolution, may direct the receiver of taxes and assessments to deposit and secure in the manner provided by section ten of the general municipal law, in his name as receiver of taxes and assessments, within twenty-four hours after receipt thereof, all moneys collected by him which are due to the supervisor. All such moneys so deposited shall be paid to the supervisor at such times as may be specified in such resolution, but in no event later than the fifteenth day of each month following the receipt thereof. The town board may require that any moneys deposited to the credit of the receiver pursuant to this subdivision be deposited in an interest bearing account. The interest earned on tax moneys so deposited, collected on behalf of the state, county, any school district or special district, shall belong to the taxing entity for which such moneys were collected unless such entity has, by statute in the case of the state or otherwise by resolution, authorized the town to credit all or a percentage of such interest to the general fund of the town. Upon the adoption of such statute or resolution, the taxing entity shall notify, in writing, all town supervisors of the percentage of interest the town is authorized to credit to its general fund. The provisions of this subdivision regarding the deposit of moneys and crediting of interest shall be controlling and shall apply to each town, notwithstanding any inconsistent provisions of any general, special or local law.

2. If any school district shall include territory in a town or towns of the first class as well as territory in a town of the second class,

or in two or more towns of the first class, the board of education or trustees or trustee of such school district shall divide the tax roll of such school district so as to set forth separately that portion of the district contained in each town of the first class and such board of education, trustees or trustee shall deliver to each receiver of taxes such proper portion of the tax roll and a warrant for the collection of the taxes levied thereon. The school district collector of such school district shall collect the taxes levied upon that portion of the district contained in a town of the second class.

§ 38. Certain offices abolished. 1. Except as otherwise provided by section twenty-five hundred six of the education law, in towns of the first class the offices of collector and of school district collector are abolished from and after the beginning of the term of office of the first receiver of taxes and assessments under this chapter, and no such collector or school district collector shall be chosen at any time to succeed the collectors in office when the term of such receiver begins. Upon the taking of office by the first receiver of taxes and assessments as provided herein, the town tax collector and each school district collector shall surrender and deliver to such receiver all tax warrants, assessment rolls, books, papers, writings and all other documents in his possession as such officer. All provisions of law applicable to town tax collectors or school district collectors, not inconsistent with the provisions of this article, are hereby made applicable to such receiver and such receiver shall continue to collect all fees and penalties which such collectors, or either of them, would collect were it not for the provisions of this article.

2. Notwithstanding the provisions of section thirty-seven of this chapter, the town board of any town of the first class may enter into agreement with one or more school boards for the collection of school taxes within such town, in which event a school district collector or collectors shall be appointed in the manner, and with all the powers and duties, prescribed by section twenty-one hundred thirty of the education law.

§ 39. Powers and duties of constables and town police officers.

Constables and town police officers shall have all the power and authority conferred upon constables by the general laws of the state and such additional powers, not inconsistent with law, as shall be conferred upon them by the town board. They shall be subject to the general authority and direction of the town board and to such orders and regulations as the town board may prescribe, not inconsistent with law.

§ 40. Powers and duties of fence viewers. The assessors shall perform all the duties and shall exercise all the powers hereinafter imposed and conferred upon fence viewers. In a town having a sole appointed assessor, the assessor and the members of the town board shall act as fence viewers.

§ 41. Additional supervisors in certain towns. 1. Resolution of town board. Any town having a population of more than one-half the total population of the county in which such town is located, according to the latest federal or state census or enumeration, shall have one additional supervisor. No such additional supervisor, however, shall be elected or appointed in any such town which has but one supervisor at the time this chapter takes effect, until the town board of such town shall by resolution adopted by a majority vote determine to provide for the election of an additional supervisor.

2. Election of supervisors in such town. At a town election held in November following the adoption of the resolution provided for in the preceding section, the electors of such town shall elect one additional supervisor who shall hold office until January first following the next biennial town election, at which time, and at each biennial town election thereafter, two supervisors shall be elected under the general and special laws relating to the election of supervisors applicable to such town, except that one of such supervisors shall be elected as presiding supervisor of such town.

3. Powers and duties of presiding supervisor. The presiding supervisor shall exercise all the powers and be charged with all the duties imposed upon or required of town supervisors, except as herein otherwise provided.

4. Powers and duties of additional supervisor. Such additional supervisor shall be a member of the town board and shall have one vote therein. Whenever by reason of sickness or absence from the state the presiding supervisor shall be prevented from attending to the duties of his office, and whenever a vacancy occurs in the office of presiding supervisor, the town board may by resolution authorize such additional supervisor to act as presiding supervisor during such disability, absence from the state or vacancy, as the case may be, and during such time said supervisor shall possess all the rights and powers of the presiding supervisor. No such additional supervisor shall perform any act as presiding supervisor until he has qualified by the filing of bonds and otherwise as required by law in the case of the presiding supervisor. Such additional supervisor shall exercise such other powers and perform such other duties not inconsistent with law as may from time to time be authorized or required by the town board.

5. Temporary appointment; vacancies. At the meeting of the town board immediately following the adoption of a resolution providing for the election of an additional supervisor, the town board may appoint the additional supervisor to which such town is entitled who shall be a resident tax payer of such town and who shall hold office until his successor is elected at the election first held thereafter as herein provided. From and after the appointment by the town board of such additional supervisor and until the election of a presiding supervisor, the supervisor in office at the time of such appointment of an additional supervisor shall be the presiding supervisor. Upon the death, disability or removal of either supervisor of such town, his successor shall be elected or appointed as provided by law in the case of a town supervisor.

6. Salary of additional supervisor. Such additional supervisor shall receive from the town a salary to be fixed by the town board.

7. Powers and duties of supervisors as members of the board of supervisors. Each supervisor from such town shall be a member of the board of supervisors of the county in which such town is located and as a member of such board he shall have powers and duties co-ordinate with the powers and duties of the supervisors of other towns in the county, and he shall receive from the county for all services in any official capacity the same salary and expenses as now or hereafter provided by law for supervisors of other towns in such county.

If the supervisor from such a town be entitled to more than one vote, the total number of votes to which such town is entitled, without any limitation which would apply to a single supervisor of such town and whether such number of votes be more or less than one-half of the total number of such votes of such board, shall be divided equally between such supervisors of such town.

§ 41-a. Abolition of the additional office of supervisor of the town of Hempstead. The additional office of supervisor of the town of Hempstead as created pursuant to the provisions of section forty-one of this chapter is abolished effective at 12:01 a.m. on January first, nineteen hundred ninety-six. For purposes of the election law, any petition filed or any nomination made in nineteen hundred ninety-five for the office of presiding supervisor of the town of Hempstead shall be deemed filed and or made for the office of supervisor of the town of Hempstead which shall exist effective 12:01 a.m. on January first, nineteen hundred ninety-six, and any petition filed or nomination made in nineteen hundred ninety-five for the office of supervisor of the town of Hempstead which is abolished hereunder shall be null and void.

§ 41-b. In any town in which the office of director of purchasing shall have been established and a director of purchasing shall have been appointed and shall have qualified, the director of purchasing shall make all purchases and all contracts for supplies, materials and equipment of every nature for the town and for any town department,

board or agency for which the town may in any event be liable and for any special improvement district within such town except for a district having a separate board of commissioners. Before making any purchase, the director of purchasing shall comply with such rules and regulations in relation thereto as may be established by resolution of the town board and such provisions of law as may be applicable thereto.

§ 42. Deputy supervisor. The town board of any town may at any time establish the office of deputy supervisor. The deputy supervisor shall be appointed by the supervisor to serve at the pleasure of the supervisor, and in case the office of supervisor becomes vacant any deputy supervisor in office at the time such vacancy occurs shall continue to serve until the successor of such deputy supervisor is appointed. If the supervisor shall fail to appoint a deputy supervisor within five days after the establishment of the office or within five days after a vacancy occurs in the office, the town board shall have power to appoint such deputy supervisor. During the absence or inability to act of the supervisor, or while the office of supervisor is vacant, the deputy supervisor shall preside, when present, at the meetings of the town board and shall be vested with all of the powers and may perform all of the duties of the supervisor under this chapter or any other law, except that he shall have no vote in his capacity as deputy supervisor on matters coming before the town board and he shall not serve as a member of the county board of supervisors. Any person, including a town officer, official or employee, may be appointed deputy supervisor, provided that the person appointed shall possess the same qualifications as an elective town officer. Before he shall perform any function as such, the deputy supervisor shall take and file the constitutional oath of office and execute and file an official undertaking in the manner prescribed in section twenty-five of this chapter. The town board shall fix the compensation which the deputy supervisor shall receive, which compensation may be in addition to any other compensation he may receive as a town officer, town official or town employee.

ARTICLE 3-A
SUBURBAN TOWN LAW

- Section 50. Short title.
- 50-a. Application.
51. General powers of town board.
52. Supervisor.
- 52-a. Official newspaper in town of Greenburgh, Westchester county.
53. Departments of town government.
- 53-a. Department heads.
- 53-b. Deputy department heads.
- 53-c. Terms of office.
54. Special improvements.
55. General reserve fund.
- 55-a. Reserve funds for improvement districts.
- 55-b. Reserve fund for judgments and claims.
- 55-c. Deposit and investment of and accounting for moneys in reserve funds.
56. Town-village cooperation.
57. Dissolution of special improvement districts.
- 57-a. Special improvement district commissioners; abolition of office.

TITLE 1
SHORT TITLE AND APPLICATION

§ 50. Short title. This article shall be known and may be cited as the suburban town law. Towns to which this article is applicable shall be known as "suburban towns. "

§ 50-a. Application. 1. The provisions of this article may be made applicable, effective on a January first, after December thirty-first, nineteen hundred sixty-three, to any town which on such January first:

(a) Has a population of at least twenty-five thousand, or

(b) Has a population of at least seventy-five hundred and is not more than fifteen miles from a city having a population of at least one hundred thousand, measured from their respective nearest boundary lines; provided, however, that the population of such town shall have increased by at least sixty-five per cent between nineteen hundred forty and nineteen hundred sixty or by at least forty per cent between nineteen hundred fifty and nineteen hundred sixty, as shown by the decennial federal censuses for such years.

The current population of a town shall be determined on the basis of the most recent decennial federal census or a special population census taken pursuant to section twenty of the general municipal law and subdivision five-a of section fifty-four of the state finance law and certified to the state comptroller pursuant to law.

2. The provisions of this article may be made so applicable to such a town by resolution of the town board adopted not later than July first preceding the January first on which the town would become a suburban town, which resolution also shall provide that the town shall at the same time become a town of the first class, if it is not then such a town, and shall elect its officers in compliance with section twelve of this chapter. Prior to the adoption of such a resolution the town board shall conduct a public hearing thereon on notice published at least ten but not more than twenty days before such hearing in a newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of this chapter. Such resolution shall be subject to referendum on motion of the town board or on petition pursuant to article seven of this chapter provided, however:

(a) That any such petition shall be filed with the town clerk not later than September fifth of the year in which the town board shall have adopted such resolution,

(b) That if the town board, on its own motion, determines that such resolution shall be subject to referendum or if such a petition be filed, such referendum shall be had at the election in November of such year or at a special town election held at least forty days after the filing of such petition, as the town board shall determine, and in the event the resolution is approved at such referendum the town shall become a suburban town on the January first following such referendum,

and

3. At any biennial town election held during and after the November prior to the January first on which a town is to become a suburban town pursuant to this section, but not including the election in November, if any, at which a town's becoming a suburban town is approved pursuant to this section, there shall be elected only such officers as are required to be elected to fill elective offices or vacancies therein, as the case may be, for such town to function as a suburban town and a town of the first class. With respect to appointive offices which such town is required to have as a suburban town and a town of the first class, vacancies therein shall exist as of the January first on which the town becomes a suburban town.

4. After it shall have been finally determined pursuant to this section that a town shall become a suburban town, the town board shall have power to determine and make provision for any matter necessarily involved in the transition from its form of town government at the time of its becoming a suburban town to its government as a suburban town under the provisions of this article where such matter is not provided for by this article.

5. (a) Within ten days after the January first on which a town becomes a suburban town pursuant to this section, the town clerk shall make a certificate to such effect and transmit the same to the secretary of state, in whose office it shall be kept as a public record, provided, however, that in the case of those towns which became suburban towns on January first, nineteen hundred sixty-four, such a certificate shall be made and transmitted to the secretary of state not later than June first, nineteen hundred sixty-four.

(b) It shall be the duty of the secretary of state to cause to be published separately, under an appropriate heading, in the appendix of the session laws of each year and in the appendix of the local laws of each year, the names of the towns which have become suburban towns and the dates on which they became suburban towns.

Title 2
TOWN BOARD

§ 51. General powers of town board. The town board of a suburban town shall be the legislative, appropriating, governing and policy determining body of the town and shall have and exercise all such powers and duties as are conferred or imposed upon it or are necessarily incidental thereto which are consistent with the provisions of this article; provided, however, that whenever the expense of a function or activity is required by law or agreement to be a charge upon the taxable property of that part of the town outside of any village and the responsibility for the performance of such function or activity is reassigned, transferred or changed in any way pursuant to the provisions of this article, the expenses and liabilities attributable to such function or activity shall continue to be a charge upon such taxable real property outside of any village. In addition to functions, powers and duties otherwise granted to it, the town board of a suburban town also shall have the following functions, powers and duties:

1. Appointment of the heads and deputies of departments of town government in cases in which such officers are appointive and the hearing and determination of charges brought by the supervisor for the removal from office of any of such appointive officers.
2. On recommendation of the supervisor, approval of budget modifications and transfers between budgetary appropriations in the annual budget or in the capital budget, if any.
3. Requiring reports from the supervisor concerning the conduct of the official business of the town and the performance by town officers and employees of their functions, powers and duties.
4. Making of studies and investigations as it deems to be in the best interests of the town and, in connection therewith, to obtain and provide for compensation for professional and technical advice, subpoena witnesses, administer oaths and require the production of books, papers

and other evidence deemed necessary or material for any such study or investigation.

5. Creation of non-compensated advisory boards, each member of which shall be appointed by the town board or the supervisor, or both, as shall be specified by the town board in its action providing for the particular advisory board.

6. Determination and provision for any matter of town government not otherwise provided for, including but not restricted to, any matter necessarily involved in the transition to government of the town as a suburban town under the provisions of this article.

Title 3 **SUPERVISOR**

§ 52. Supervisor. The supervisor shall be the chief executive officer of a suburban town and head of the administrative branch of town government. He shall be responsible for the proper administration of town affairs, law enforcement and the maintenance of peace and order in the town. Except as otherwise provided in this article or other applicable law, in addition to the functions, powers and duties of a supervisor as provided by this chapter and other laws of the state, the supervisor shall have the following functions, powers and duties:

1. Appoint, and at pleasure remove, a director of finance who shall assist the supervisor in the preparation of the preliminary budget and the capital budget, if any, and in the administration of other fiscal operations of the town for which the supervisor is responsible.

2. On the basis of estimates submitted to him by departments, agencies and officers of the town, prepare annually the preliminary budget of the town and submit it to the town board and be responsible for administration of the annual budget after adoption by the town board, and be responsible for recommending modifications and transfers between

appropriations in such budget during the fiscal year.

3. Where the town board has, by local law, established a capital budget procedure, on the basis of estimates submitted to him by departments, agencies and officers of the town, prepare with the assistance of the planning board, if any, a proposed capital budget and, after adoption of a capital budget by the town board, recommend for action by the board, from time to time when necessary, modifications and transfers between appropriations in such capital budget.

4. Bring removal charges against the appointive head or deputy head of any department of town government for hearing and determination by the town board.

5. Approve the transfer of personnel in and among agencies and departments of the town.

6. Provide for and direct the internal organization and reorganization within individual town departments or agencies where consistent with applicable law, provided, however, that in any event, permissible transfers of functions between departments or agencies shall be subject to approval of the town board.

7. Keep the town board informed generally concerning town affairs and of the financial condition and future needs of the town and make such recommendations as may seem to him desirable.

8. Have and perform the functions, powers and duties necessary for the execution of those functions, powers and duties specifically granted in this article or other applicable law consistent herewith.

§ 52-a. Official newspaper in town of Greenburgh, Westchester county. Notwithstanding any other provision of law to the contrary, the town board of the town of Greenburgh, Westchester county is hereby authorized and empowered to designate as the official newspaper of such town any newspaper regularly published in such town if such newspaper has been

entered as second class mail matter, or such town board shall have the option to designate as its official newspaper any newspaper published in the county if such newspaper has general circulation in such town. If no official newspaper has been designated, the town board may authorize the publication of a notice, resolution or ordinance in any newspaper which could be designated as the official newspaper of the town. Such authorization shall be deemed a designation of such newspaper as the official newspaper of the town for the purpose of such publication. Additional newspapers published in the English language may be designated for the publication of such notices, resolutions and ordinances at the option of the town board. Any designation by the town board pursuant to the foregoing provisions shall be deemed sufficient authority for designation of any such newspaper by any board, agency, commission or authority of such town for any publication of notice or resolution required by law unless the town board in its discretion shall clearly indicate otherwise.

Title 4

TOWN DEPARTMENTS

§ 53. Departments of town government. The town board of a suburban town may, by local law, create, modify or discontinue departments of the town government in addition to those otherwise authorized by law and may assign additional functions or duties to offices, departments or agencies established by or pursuant to act of the legislature or local law, but may not discontinue or assign to any other office, department or agency any function or duty otherwise required by law to be performed by an officer serving in an elective office.

§ 53-a. Department heads. The town board shall appoint the head of any department of the government of the town established or created in accordance with the provisions of this article. Such department heads shall be principal executive officers of their respective departments and their offices shall be in the unclassified service, and unless their

titles are otherwise designated by the town board, they shall be known as directors. Salaries of department heads shall be determined in the same manner as is provided in the annual budget for the salaries of other town officers, provided, however, that where the duties of a department head are increased, altered or diminished by local law and to the extent funds are available therefor, appropriate adjustment may be made in such local law in the salary of such department head.

§ 53-b. Deputy department heads. The town board may appoint such deputy department heads as may be authorized by act of the legislature or local law, with power to act generally for and in place of their principals, and the office of such a deputy shall be in the exempt class of the civil service.

§ 53-c. Terms of office. The head of a department and a deputy department head shall hold office until the first day of January next succeeding the first bi-annual town election held after his appointment, and thereafter, shall hold office for the term of two years and until his successor shall have qualified, provided, however, that the appointees to such offices shall be removable at the pleasure of the town board unless otherwise provided by local law.

Title 5

SPECIAL IMPROVEMENTS

§ 54. Special improvements. 1. Definition and application. (a) The term "improvement" or "special 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 an improvement district pursuant to article twelve or twelve-a of this chapter, but not including water quality treatment districts.

(b) 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 special 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, where appropriate, a map for providing an 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 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 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, if any, 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 improvement, a description of the boundaries of the proposed benefited area, if any, the maximum amount proposed to be expended for the proposed improvement, the proposed method of apportioning the costs of such improvement, the proposed method of financing to be employed, the fact that a plan, report and map, if any, 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 improvement, or that any property benefited by the 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 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 improvement.

5. Increase in maximum amount. (a) At any time prior to the completion of an improvement, the maximum amount proposed to be expended for such 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 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 in 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 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.

(b) If the notice of public hearing held pursuant to subdivision three or four hereof proposes only the performance or supplying of certain services and states the maximum amount to be expended annually for such services, the maximum amount to be expended annually may be increased by an order of the town board, provided the town board shall, after a public hearing, determine that it is in the public interest to authorize the increase in such maximum amount. 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 increase proposed in the maximum amount to be expended annually.

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 improvement.

(b) If the town board shall determine that it is not in the public

interest to make the proposed improvement, the board shall adopt a resolution stating the reasons for its determination not to make the proposed improvement and enter the same in the minutes of its proceedings.

(c) If the town board shall determine that it is in the public interest, the board may adopt a resolution authorizing such 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 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 this subdivision, subdivision five or paragraph (c) of subdivision eight of this section, or section fifty-seven of this chapter 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 this subdivision, subdivision five or paragraph (c) of subdivision eight of this section, or section fifty-seven of this chapter may review the same by a proceeding pursuant to article seventy-eight of the civil practice act 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 act 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 an improvement shall become effective, such 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 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 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 improvement shall confer upon such lots or parcels, or (2) any part of the cost of the 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 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 an 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 improvement. The only change in the apportionment of the costs of an 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 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 section fifty-one-a of this article.

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 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, where appropriate, a map for such 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 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 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 improvement is in the public interest and economically feasible, the board shall direct the preparation of a general plan, report, and where appropriate, a 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, sewage disposal, water or drainage 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 an 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 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 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, 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 per cent 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 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; provided, however, that, where the improvement is only the providing of a service at a stated annual cost, such annual cost shall be charged in the manner prescribed in the provisions of the resolution adopted pursuant to paragraph c of subdivision six of this section or in modifications thereof, if any, adopted pursuant to paragraph c of subdivision eight of this section.

12-a. Sewer rents and water rates. The town board may establish sewer rents and water rates as provided in paragraph (l) of subdivision 1 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 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 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 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 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 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 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 section 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 per

cent 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 a 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 purpose 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.

Title 6 **RESERVE FUNDS**

§ 55. General reserve fund. 1. The town board of a suburban town may establish a general reserve fund for the financing of all or part of the cost of town objects or purposes having periods of probable usefulness of at least five years pursuant to paragraph a of section 11.00 of the local finance law, other than objects or purposes for which a reserve fund may be established pursuant to section fifty-five-a or fifty-five-b of this chapter.

2. There may be paid into such fund:

(a) Such an amount as may be provided therefor by budgetary appropriation or transfer or raised by tax therefor.

(b) Such revenues as are not required by law to be paid into any other fund or account, including the proceeds from the sale of any capital improvement or equipment owned by such town.

3. An expenditure may be made from the fund only by an authorization of the town board and only for a specific object or purpose having a period of probable usefulness of at least five years pursuant to paragraph a of section 11.00 of the local finance law. The authorization

of such an expenditure shall be subject to a permissive referendum in the manner provided by article seven of this chapter. No expenditure from the fund shall be authorized for that part of the cost of any object or purpose which is to be borne by (a) assessments for benefit, (b) ad valorem taxes upon the real property within an area of benefit within the town, or, (c) ad valorem taxes upon the real property within an area of the town less than the entire area.

4. Nothing contained in this article shall be deemed to prevent the temporary advance of the moneys in the fund pursuant to the provisions of section 165.10 of the local finance law.

§ 55-a. Reserve funds for improvement districts. 1. The town board of a suburban town, on behalf of any improvement district wholly located within the town, may establish one or more reserve funds for the financing of all or part of the cost of a "specific object or purpose" or a "class of objects or purposes", as such terms are defined in section 2.00 of the local finance law, which may be constructed, reconstructed, acquired or provided by or on behalf of such district. The authorization of the establishment of such a fund shall be subject to a permissive referendum in the affected district and shall set forth the estimated maximum cost of any such specific object or purpose or class thereof.

2. There may be paid into such fund such an amount as may be provided therefor by budgetary appropriation or such district revenues as are not required by law to be paid into any other fund or account. Any amount to be assessed, levied and collected in a district to provide money for such a fund shall be assessed, levied and collected in the same manner and at the same time as the amount to provide for the costs of operation and maintenance of such district.

3. An expenditure may be made from such a reserve fund only by an authorization of the town board and only for a specific object or purpose or class thereof, the cost of which may be financed therefrom.

4. The town board may authorize the transfer to the credit of a reserve fund created pursuant to this section for the district affected, any unexpended balance remaining in another reserve fund created for such district. If the object or purpose or class thereof for which the latter fund was established has been completed, acquired or provided, a sum sufficient to satisfy all outstanding claims arising from such completion, acquisition or provision shall be retained in such fund and not transferred.

§ 55-b. Reserve fund for judgments and claims. 1. The town board of a suburban town may establish a reserve fund for the financing of all or part of the cost of payment of:

- (a) Judgments or compromised or settled claims against the town; and
- (b) Awards or sums payable by the town pursuant to a determination by a court, or an officer, body or agency acting in an administrative or quasi-judicial capacity.

2. The amount of any such fund shall not exceed the greater of thirty-three thousand dollars or five per centum of the total budget for such fiscal year at any one time, exclusive of any interest or capital gains realized from the investment of the money in such fund. Whenever an expenditure shall be made from such fund, additional money may be appropriated or transferred thereto in an amount which, together with all money remaining in such fund including any interest or capital gains realized from the investment of the money in such fund, shall not exceed the greater of thirty-three thousand dollars or five per centum of the total budget for such fiscal year.

3. There may be paid into such fund:

- (a) Such an amount as may be provided therefor by budgetary appropriation or transfer or raised by tax therefor.
- (b) Such revenues as are not required by law to be paid into any other fund or account, including the proceeds from the sale of any capital improvement or equipment owned by such town.

4. An expenditure may be made from the fund only by authorization of

the town board and only for a specific object or purpose, the cost of which may be financed therefrom. Any expenditure made from such fund to pay all or part of the cost of a judgment, claim, award or determination arising out of the management, improvement, operation or maintenance of any special improvement district located in the town shall be charged back against such district and raised in the same manner as other district charges. Any amount so charged to a district shall be included in determining the amount of such fund, exclusive of any interest or capital gains realized from the investment of the money in such fund.

§ 55-c. Deposit and investment of and accounting for moneys in reserve funds. 1. The money in each reserve fund established pursuant to this article shall be deposited and secured in the manner provided by section ten of the general municipal law.

2. The town board or the chief fiscal officer of the town, if the town board shall delegate such duty to him, may invest the moneys in each such reserve fund or, in two or more such funds, in the manner provided in section eleven of the general municipal law. Any interest earned or capital gains realized on the money so deposited or invested shall accrue to and become a part of each such fund. Where the money in two or more such reserve funds are invested together, the interest earned or capital gains realized shall be apportioned to each separate fund in the same proportion as the amount of each fund bears to the aggregate amount of the several funds.

3. The chief fiscal officer shall keep a separate account for each such fund. Such account shall show:

- (a) The date and amount of each sum paid into the fund.
- (b) The interest earned by such fund.
- (c) The capital gains or losses resulting from the sale of investments of the fund.
- (d) The interest or capital gains which have accrued to the fund.
- (e) The amount and date of each expenditure from the fund.
- (f) The assets of the fund, indicating the cash balance therein and the schedule of the amounts invested.

The chief fiscal officer, at the termination of each fiscal year, shall render a detailed report of the operation and condition of each such fund to the town board.

4. The members of the town board are hereby declared trustees of each such fund and shall be subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by the town, or by any board, commission, agency, officer or taxpayer thereof.

5. The members of the town board shall not:

(a) Authorize an expenditure or withdrawal from any such fund for any purpose other than for the financing of an object or purpose which has been authorized to be financed in whole or in part from such fund; or

(b) Expend any money withdrawn from any such fund for a purpose other than that for which it was authorized to be withdrawn.

Any violation of this subdivision shall be an offense punishable by a civil penalty of not more than one hundred dollars. The provisions of this subdivision shall be considered to be in addition to any other penalties provided by law.

Title 7

TOWN-VILLAGE COOPERATION

§ 56. Town-village cooperation. 1. Where a suburban town and a village or villages therein create one or more joint municipal survey committees pursuant to article twelve-C of the general municipal law and where such a committee makes a recommendation relating to the provision of an existing or new function, service or facility in the town and in one or more villages thereof:

a. If the recommendation is for the provision or extension of (1) a town function, service or facility to one or more villages in the town

and for the spreading of the costs thereof against the affected area of the town outside villages and against the affected area of such village or villages or (2) a village function, service or facility to an area of the town outside any village or to an area of any other village and for the spreading of the costs thereof against the affected area or areas, of the village or villages and against the affected area of the town, and if such recommendation is acceptable to the town board and the affected village board or boards, the town board and village board or boards, respectively, may adopt such recommendation and, notwithstanding any inconsistent provision of any general or special law, taxes, assessments, or other charges necessary to pay the cost of such function, service or facility shall be spread (1) by the town against the affected area of the town outside villages and against the affected area in such village or villages or (2) by the village or villages against the affected area of such village or villages and by the town against the affected area of the town outside any such village, as the case may be.

b. If the recommendation is for the provision or extension of a function, service or facility by the town in the area outside villages or outside a specified village or villages, as the case may be, and for the separate provision thereof by such village or villages, with the respective costs to be spread by the town against the area outside villages or outside the specified village or villages, as the case may be, and separately by such village or villages against the area or areas within the same, and if such recommendation is acceptable to the town board and the affected village board or boards, the town board and the affected village board or boards, respectively, may adopt such recommendation and, notwithstanding any inconsistent provision of any general or special law, the necessary taxes, assessments, or other charges for such function, service or facility shall be borne and spread on such basis.

c. If the recommendation is for the performance of a function, power or duty among them or their districts, on a cooperative, joint or contract basis pursuant to article five-G of the general municipal law, or other similar law, and for allocating and financing the capital and

operating costs among them or their districts on a specified equitable basis, and if such recommendation is acceptable to the town board and the affected village board or boards, the town board and the affected village board or boards, respectively, may adopt such recommendation pursuant to such article and, notwithstanding any inconsistent provision of general or special law, such function, power or duty shall be so provided and the costs allocated and financed on such basis.

d. Where costs are to be spread against an area of a town or an area of a village and such costs are financed pursuant to the local finance law, such area shall be primarily liable therefor.

2. Members of the town board shall be eligible to serve on any joint municipal survey committee in which the town participates.

Title 8

MISCELLANEOUS PROVISIONS

§ 57. Dissolution of special improvement districts. 1. Whenever the town board of a suburban town shall determine after a public hearing as hereinafter provided that it is in the public interest to manage, maintain, operate and repair as a town function, pursuant to title five of this article, any improvement or service provided or authorized to be provided by one or more special improvement districts, it may adopt a resolution dissolving all special improvement districts wholly located in such town created or existing to provide such improvement or service.

The resolution dissolving the district or districts shall provide for the assessment of the costs of any improvement provided or authorized to be provided by such district or districts, including the principal of and interest on any bonds or other obligations authorized to be issued for the purposes of such district or districts or which have been issued for the purposes of such district or districts and are outstanding and unpaid as of the date of such dissolution, to be borne partly by the area of the town outside of any villages and partly by lands benefited

thereby; or by the area of the town outside of any villages; or entirely by lands benefited thereby as the town board, in its discretion, shall determine. Where however, (1) any part of the costs of the 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 improvement shall confer upon such lots or parcels, or (2) any part of the costs of the 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.

2. Any such resolution shall provide that the cost of the management, maintenance, operation and repair of such improvement or service shall thereafter 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.

3. The district or districts shall be dissolved on the first day of January next succeeding the effective date of the resolution dissolving such district or districts provided, however, that if the effective date of such resolution shall be subsequent to the first day of August in any year, the dissolution of such district or districts shall be effective on the first day of January of the second succeeding calendar year.

4. Upon the dissolution of any such district or districts pursuant to this section, the improvement or service provided or authorized to be provided by such district or districts shall thereafter be a town function and the town board shall be responsible for the necessary management, maintenance, operation and repair thereof. All the property of such district or districts shall become the property of the town.

5. The town board shall conduct a public hearing on the proposed dissolution of a district or districts pursuant to this section, on notice published at least ten but not more than twenty days before such

hearing in a newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of this chapter and shall also cause a copy thereof to be posted upon the bulletin board in the office of the town clerk. Such notice shall specify the time when and the place where such hearing will be held and in general terms, describe the proposed dissolution, and where appropriate, the proposed basis of apportioning, levying and assessing all improvement costs and shall specifically state that the cost of the management, maintenance, operation and repair of such improvement or service provided or authorized to be provided by the district or districts proposed to be dissolved shall thereafter 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.

6. The town board may complete any improvement authorized to be provided in the district or districts dissolved or to be dissolved and finance such improvement pursuant to the local finance law.

7. The town clerk shall cause a certified copy of any such resolution to be duly recorded in the manner prescribed in paragraph (d) of subdivision six of section fifty-four of this chapter and to be filed with the state comptroller no later than ten days after it shall become effective.

§ 57-a. Special improvement district commissioners; abolition of office. 1. Except where the town board of a town shall by at least a three-fourths vote of the whole number of its members taken not later than July first in the year in which it adopts a resolution to become a suburban town, adopt a resolution continuing such offices, the term of every commissioner in any improvement district located in any suburban town shall expire on the thirty-first day of December immediately succeeding the January first on which any such town shall become a suburban town pursuant to section fifty-a of this chapter, unless a petition be filed as provided herein requiring the submission to the qualified electors in any such district of a proposition "Shall the offices of commissioners be retained in the (insert the name of the

district)?" Any such petition shall be filed in the office of the town clerk and shall be 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 at least twenty-five per centum, or five hundred, whichever is less, of the resident electors of the district qualified to vote at the last general election. Any such petition must be filed not later than the first day of July immediately succeeding the January first on which the town became a suburban town.

2. The proposition for which the petition shall have been filed shall be submitted to a special town election to be held not later than forty days after the filing of such petition and at a place within such district to be fixed by the town board. Notice of the election shall be given, the election held and the votes canvassed and results certified and returned in the manner provided in article six of this chapter relating to special town elections. Every elector of the town who is a resident and the owner of property in such district assessed upon the last preceding town assessment roll shall be entitled to vote at such election.

3. If a majority of the votes cast on any proposition submitted as herein provided be in the affirmative, the provisions of article thirteen of this chapter shall continue to be applicable to such district and the affairs of such district shall continue to be administered in the manner therein provided. If a majority of the votes cast not be in the affirmative, or if no petition be filed, the commissioners of such district shall (a) deliver to the town clerk not later than such thirty-first day of December all the records, books and papers of such commissioners, (b) deliver to the supervisor all funds, (c) deliver to the town board all other property in their possession or under their control and (d) make complete and proper accounting therefor to the town board.

4. In the event of the abolition of the office of district commissioner pursuant to this section, all powers previously exercised by the commissioners so abolished shall thereafter be vested in and

exercised by the town board unless otherwise provided by such board pursuant to this chapter.

ARTICLE 3-B

TOWN MANAGER

Section 58. Town manager.

58-a. Powers and duties.

§ 58. Town manager. Any town may, by local law, establish the office of town manager, provide for his appointment and delegate to such office such powers and duties as may be prescribed, modified or revoked from time to time by the town board.

§ 58-a. Powers and duties. The town manager shall be the chief administrative officer of the town and may be given such powers and duties by local law, as the town board in its discretion shall prescribe notwithstanding the provisions of any general or special law to the contrary, unless the legislature expressly shall have restricted or prohibited the adoption of a local law relating to the delegation or grant of such powers provided, however, that the powers of legislation and appropriation shall be exercised by the town board. Subject to the provisions of sections twenty-three and twenty-four of the municipal home rule law, the town board may also, by local law, grant or transfer to such town manager powers and duties held by elected officials of the town.

ARTICLE 4

TOWN BOARDS

Section 60. Town board constituted.

60-a. Removal of town justices from town board.

61. Commissions abolished.

62. Meetings of town board.

63. Presiding officer and rules of procedure.

- 64. General powers of town boards.
- 64-a. Payment in lieu of taxes for property acquired for park or recreational purposes.
- 64-b. Powers of town with respect to municipal deposits in national banks in liquidation.
- 64-c. Payment in lieu of taxes for property acquired for park and recreational purposes.
- 64-d. Payment in lieu of taxes for property acquired for open space purposes.
- 64-e. Peconic Bay region community preservation funds.
- 64-ee. Peconic Bay region septic system replacement loan program.
- 64-f. Town of Brookhaven community preservation fund.
- 64-g. Town of Warwick preservation funds.
- 64-h. Town of Red Hook preservation funds.
- 64-i. Town of Chatham preservation funds.
- 64-i*2. Town of Fishkill preservation funds.
- 64-j. Town of Northeast preservation funds.
- 64-k. Peconic Bay region community housing fund.
- 64-l. Town of Chester preservation funds.
- 64-l*2. Town of Orangetown preservation funds.
- 64-l*3. Town of Copake preservation funds.
- 64-m. Town of Clarkstown preservation funds.
- 65. Actions and proceedings by and against towns.
- 65-a. Liability of towns and town superintendents of highways in certain actions.
- 66. Place of trial of actions and proceedings against towns; inhabitants not incompetent to act thereat.
- 67. Presentation of claims for torts: actions against towns.
- 68. Compromise of actions, proceedings or claims.
- 69. Duties of town board with respect to justice courts.

§ 60. Town board constituted. 1. In every town the supervisor and the town council members shall constitute the town board and shall be vested with all the powers of such a town and shall possess and exercise all the powers and be subject to all the duties now or hereafter imposed by

law upon town boards and town boards of health within such towns; but it is not intended to extend the power of said boards or officers within the limits of any incorporated village or city, or in any manner to abridge or interfere with the power and authority of the officers of any such village or city within its corporate limits, except as otherwise provided by law.

2. In any town in which a town justice serves as a member of the town board, such town justice shall continue to serve as a member of the town board until the expiration of their term. Thereafter any town justice shall not be a member of the town board and a town council member shall be elected as a member of such town board in place of such town justice except as otherwise provided by the town board by resolution adopted pursuant to the provisions of section sixty-a of this article.

§ 60-a. Removal of town justices from town board. 1. Notwithstanding any provision of this chapter or any other law to the contrary, in any town in which a town justice serves as a member of the town board, a vacancy shall be created and is hereby created on the town board upon the expiration of the term of office of such justice and the membership of such town board shall consist of a town supervisor and town council members and the vacancy on such town board created by the expiration of the term of the town justice shall be filled at the general election preceding the expiration of the term of such justice by the election of a town council member, unless the office of town council member does not exist in such town. In the event the town board determines that council members should be elected biennially and in order to so provide, it is necessary that such council member be elected for a single one year term or a single three year term, such town board may, by resolution provide that the town council member elected to fill the vacancy created by the expiration of the term of town justice as town board member, shall be first elected for a single one or three year term as provided in such resolution and their successors shall thereafter be elected for four year terms.

Notwithstanding the provisions of this section, or any other law to

the contrary, which provides that a town justice shall not constitute a member of the town board, such office of town justice shall continue and such town justice shall have all the powers and duties of a town justice as defined by the uniform justice court act and as otherwise provided by law. Such town justices shall continue to be elected as town justices except that such town justices shall not constitute members of the town board.

2. In the event the town board determines that it will be in the best interests of the town, such town board may, by the adoption of a resolution, subject to permissive referendum, reduce the number of council members or town justices and provide that the term of such town council member first elected shall be for a single two or four year term in order to provide for biennial town elections and their successor shall thereafter be elected for four year terms. In no event shall any town board constitute less than two town council members and the supervisor. The town board of any town in which the number of council members or justices has been reduced pursuant to this subdivision, may adopt a resolution, subject to permissive referendum, restoring one or two of the offices of council members or town justices previously reduced, provided, however, that the total number of town justices for such town including the restored offices, shall not exceed the number provided in subdivision one of section twenty of this chapter. Such resolution shall provide for a two or four year term for the restored office of council member in order to provide for biennial town elections, and their successor shall thereafter be elected for four year terms. The election of a council member or town justice to the restored office shall take place at the biennial town election next succeeding the effective date of such resolution, for a term of office commencing January first following the election.

§ 61. Commissions abolished. Every separate board of commissioners is hereby abolished, except fire district commissioners, and commissioners of districts created pursuant to the provisions of chapter four hundred twenty-three of the laws of nineteen hundred seventeen and chapter five hundred fifty-five of the laws of nineteen hundred twenty-six, and the

commissioners of any district which shall have adopted a proposition pursuant to subdivision ten of section three hundred forty-one of this chapter. The town clerk shall forthwith notify the members of such boards so abolished and they shall deliver to the town clerk within ten days, all the records, books and papers of such boards or commissions and, within the same time, shall deliver to the supervisor all funds, and to the town board all other property in their possession or under their control, and make complete and proper accounting therefor to the town board. All powers heretofore exercised by said separate boards or commissions so abolished shall hereafter be vested in and be exercised by the town board.

Except as otherwise provided by law and subject to the provisions of this chapter, districts now existing shall continue as now established until such time as the town board may otherwise determine, pursuant to the provisions of article twelve. The town board shall have authority to, and may exercise in and for such districts all the powers permitted by section one hundred ninety-eight of this chapter, and such additional powers as shall be necessarily implied therefrom for the operation and maintenance of such district or districts, including but not limited to the employment of personal services and the purchase of required equipment. The town board shall annually prepare a budget for the operation and maintenance of each such district, including therein the amounts necessary for the retirement of all bonds or other obligations and for the payment of interest upon all outstanding indebtedness becoming due during the next fiscal year, and the supervisor shall submit such budget to the board of supervisors of the county at the annual session thereof, and the total amount of such budget shall be assessed and levied upon and collected from the taxable property within such district or districts.

§ 62. Meetings of town board. 1. The town board of every town shall meet on or before the twentieth day of January in each year for the purpose of making the annual accounting by town officers and employees as required by section one hundred twenty-three of this chapter. The requirement for the annual accounting shall not apply to a town having a

town comptroller, nor to a town which, prior to the twentieth day of January, shall have engaged the services of a certified public accountant or public accountant to make an annual audit to be completed within sixty days after the close of the town's fiscal year.

2. The town board of every town of the first class shall hold at least one meeting in each month. The supervisor of any town may, and upon written request of two members of the board shall within ten days, call a special meeting of the town board by giving at least two days notice in writing to members of the board of the time when and the place where the meeting is to be held. All meetings of the town board shall be held within the town at such place as the town board shall determine by resolution, except that where provision is made by law for joint meetings of two or more town boards such joint meetings may be held in any of the towns to be represented thereat.

§ 63. Presiding officer and rules of procedure. The supervisor, when present, shall preside at the meetings of the town board. In the absence of the supervisor, the other members shall designate one of their members to act as temporary chairman. A majority of the board shall constitute a quorum for the transaction of business, but a lesser number may adjourn. The vote upon every question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the minutes. Every act, motion or resolution shall require for its adoption the affirmative vote of a majority of all the members of the town board. The board may determine the rules of its procedure, and the supervisor may, from time to time, appoint one or more committees, consisting of members of the board, to aid and assist the board in the performance of its duties.

§ 64. General powers of town boards. Subject to law and the provisions of this chapter, the town board of every town:

1. Control of town finances. Shall have the general management and control of the finances of the town and shall designate in the manner

provided by section ten of the general municipal law the depositaries in which the supervisor, town clerk, tax collector, tax receiver, and trustees of the freeholders and commonalty of a town shall deposit and secure all moneys coming into their hands by virtue of their offices.

1-a. Petty cash fund. Notwithstanding the provisions of section one hundred eighteen of this chapter, may by resolution establish a petty cash fund for any town officer or head of a department or office in any town, for the payment, in advance of audit, of properly itemized and verified or certified bills for materials, supplies or services furnished to the town for the conduct of its affairs and upon terms calling for payment to the vendor upon the delivery of any such materials or supplies or the rendering of any such services, provided that moneys in any such fund also may be used for the purpose of making change when such is required in the performance of official duties. The amount of the petty cash fund established for a receiver of taxes and assessments in a town of the first class shall not exceed one thousand dollars and for any other officer or office or department head shall not exceed five hundred dollars. Prior to making his return of unpaid taxes to the county treasurer, a collector of taxes in a town of the second class shall reimburse the supervisor for the amount of the petty cash fund previously advanced to him. At the time of any payment from such fund, the officer for which the fund was established shall require delivery to him of a bill in form sufficient for audit by the town board as required by law. At each meeting of the town board a list of all expenditures made from each such fund since the last meeting of the board, together with the bills supporting such expenditures, shall be presented to the town board for audit and the town board shall direct the supervisor to reimburse each petty cash fund from the appropriate budgetary item or items, in an amount equal to the totals of such bills which it shall so audit and allow, except that, in any such town in which there is a town comptroller, such list of expenditures, together with such bills shall be presented to said town comptroller for audit no later than the last day of each month and the supervisor shall so reimburse each petty cash fund in an amount equal to the total of such bills which the town comptroller shall so audit and allow. Any of such bills or any portion of any of such bills which the town board or the

town comptroller, as the case may be, shall refuse to audit and allow shall be the personal liability of the officer for which the fund was established and he shall promptly reimburse his petty cash fund in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to such officer after the action of the town board or the town comptroller, as the case may be, in disallowing an amount so expended, such amount shall be withheld from his salary payment and, if necessary, subsequent salary payments and paid into the appropriate petty cash fund until an amount equal to the amount so disallowed has been repaid to such petty cash fund. Any bond or undertaking filed by any town officer or department or office head shall be available to the town for recovery of any losses incurred by reason of the operation of the petty cash fund established for him.

2. Acquisition and conveyance of real property. May acquire by lease, purchase, in the manner provided by law, or by acquisition in the manner provided by the eminent domain procedure law, any lands or rights therein, either within or outside the town boundaries, required for any public purpose, and may, upon the adoption of a resolution, convey or lease real property in the name of the town, which resolution shall be subject to a permissive referendum. If the property or rights be acquired by acquisition, the town board may subject to the provisions of the eminent domain procedure law at once enter into possession of the real property or rights described when the judgment shall have been made and entered, and the town shall thereupon stand charged and responsible for the prompt payment of the amount which may ultimately be awarded. Lands or rights required for a district purpose shall be acquired by the town board in the name of the district, and the cost thereof shall be a charge upon and assessed against such district. Such district lands and rights may be sold or leased in the manner provided in subdivision twelve of section one hundred ninety-eight of this chapter.

2-a. Acquisition and sale of personal property. May take, purchase, lease, sell and dispose of personal property as the purposes of the town may require, except as otherwise provided by law.

3. Management, custody and control of town property. Shall have the

management, custody and control of all town lands, buildings and property of the town and keep them in good repair and may cause the same to be insured against loss or damage by fire or other hazard.

4. Indemnity insurance. May contract at the expense of the town for insurance indemnifying the town against any loss arising from injuries to persons or property.

5. Vacancies. Whenever a vacancy shall occur or exist in any town office, the town board or a majority of the members thereof, may appoint a qualified person to fill the vacancy. If the appointment be made to fill a vacancy in an appointive office, the person so appointed shall hold office for the remainder of the unexpired term. If the appointment be made to fill a vacancy in an elective office, the person so appointed shall hold office until the commencement of the calendar year next succeeding the first annual election at which the vacancy may be filled. A person, otherwise qualified, who is a member of the town board at the time the vacancy occurs may be appointed to fill the vacancy provided that he shall have resigned prior to such appointment.

5-a. Removal of fire and health hazards and weeds. The town board may require the owners of land to cut, trim or remove from the land owned by them brush, grass, rubbish, or weeds, or to spray poisonous shrubs or weeds on such land, and upon default may cause such grass, brush, rubbish or weeds to be cut, trimmed or removed and such poisonous shrubs or weeds to be sprayed by the town and the total expense of such cutting, trimming, removal or spraying may be assessed by the town board on the real property on which such brush, grass, rubbish, weeds or poisonous shrubs or weeds were found, and the expense so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other town charges. If the owner of said lands is a non-resident, a notice to so cut, trim or remove such brush, grass, rubbish or weeds or to spray such poisonous shrubs or weeds mailed to such owner addressed to his last known address shall be sufficient service thereof. The provisions of this subdivision shall not apply within the property lines of any lands or highway

easements owned by another municipal corporation or political subdivision of the state.

6. Award and execution of town contracts. May award contracts for any of the purposes authorized by law and the same shall be executed by the supervisor in the name of the town after approval by the town board.

7. Franchises. Except as otherwise provided by law, may grant rights, franchises, permissions or consents for the use of the streets, highways, and public places or any part thereof or the space above or under them or any of them, for any specific purpose authorized by law upon such terms and conditions as it may deem proper and as may be permitted by law. No such franchise, permission or consent shall be granted without a public hearing, notice of which shall be given by the publication of a notice thereof in the official paper at least ten days before the meeting.

8. Gifts to town. May take by gift, grant, bequest or devise and hold real and personal property absolutely or in trust for parks or gardens, or for the erection of statues, monuments, buildings or structures, or for any public use, upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said town, and provide for the proper administration of the same.

9. Naming and numbering streets, and providing street signs. May designate by name and number the streets, avenues, lots, public buildings and places, and may cause a map of the town to be prepared and filed in the office of the town clerk, and purchase, install and maintain street signs showing the names of streets and avenues therein. Such names may also be changed and altered as the town board may determine. Whenever the town board shall change the name or number of any street, avenue, public building or place, the town clerk shall within ten days thereafter notify the board of assessors and the planning board, if any, of said town, the county clerk and county engineer of the county in which said town is located, and the post-office department of the United States thereof.

10. Street profiles. The town board may provide for the establishment of the profiles and grades of any accepted street, avenue or highway in the town and upon the completion thereof shall cause the same to be filed in the office of the town clerk and of the superintendent of highways of the town.

10-a. Permits for filling or diversion of streams. The town board may provide for control over the filling or diversion of streams and watercourses, except when authorized by a state or federal agency, by requiring that any person, firm or corporation shall secure a permit from the town board before filling or diverting any stream or watercourse from its natural course. The town board may in its discretion deny a permit if it determines that the proposed filling or diversion is detrimental to the drainage or welfare of the town.

10-b. Temporary blocking of town streets, highways and roads. After a public hearing on at least five days notice, may adopt regulations setting forth terms and conditions for issuance of a permit by the town superintendent of highways or commissioner of public works to hold a neighborhood block party, celebration or event on a town street, highway or road. Prior to the time for commencing of such party, celebration or event and for the duration thereof, the permit issuing official shall cause the street or portion thereof to be blocked to motor vehicles except authorized emergency or hazard vehicles, as defined in the vehicle and traffic law and to provide detour signs for vehicular traffic.

11. Official newspaper. May designate as the official paper of the town any newspaper regularly published in the town if such newspaper has been entered as second class mail matter. If no such newspaper is published in the town, and in any town of the second class having a population in excess of sixty thousand according to the latest federal census if there is no newspaper published in such town having general circulation therein, the town board may designate any newspaper published in the county if such newspaper has general circulation in the town or if no newspaper is published in the county entered in a post office within five miles from the town, any other newspaper published in

a city, town or village in an adjoining county and having a circulation in the town. If no official paper has been designated, the town board may authorize the publication of a notice, resolution or ordinance in any newspaper which could be designated as the official newspaper of the town or, if there be no newspaper which is regularly published in the town and entered as second class mail matter, the town board may authorize such publication in any newspaper published and having general circulation in the town. Such authorization shall be deemed a designation of such newspaper as the official paper of the town for the purpose of such publication. Additional newspapers published in the English language may be designated for the publication of such notices, resolutions and ordinances at the option of the town board. Notwithstanding any provisions of this subdivision to the contrary, any publication may be designated as the official paper of the town which was designated and publishing notice as an official newspaper of the town prior to the year nineteen hundred forty and continued to be so designated and publishing for at least thirty years after such year.

11-a. Drainage facilities. Upon the adoption of a resolution, the town board of any town may, for the purpose of drainage and to protect the property within the town from floods, freshets, and high waters, construct drains, culverts, ditches, sluices, and other channels for the passage of water, and may deepen, straighten, alter, pipe, or otherwise improve any of the lakes, ponds, streams, ditches, drains, or water courses in any part or section of the town in order to prevent the same from overflowing, and provide that the same carry off such additional water as may be brought to the same by other public improvements in the towns; and for such purposes the town board of any town may acquire real property or an interest therein by purchase, dedication, gift, devise, or by condemnation in the manner provided by law for acquisition of real property for highway or town road purposes. If an expenditure for any of such purposes is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, the adoption of a resolution therefor shall be subject to a permissive referendum.

11-b. Publication of minutes of town board meetings. The town board of any town may publish the minutes of its proceedings in the official

newspaper, or if no official newspaper has been designated, in any newspaper having general circulation in the town.

11-c. Central fire alarm system. In any town, all the area of which outside of any village or villages is included in fire districts, fire alarm districts and fire protection districts, the town board may provide for and establish a central fire alarm system in such town, and may purchase or lease, install, construct and maintain necessary equipment for the operation of such central fire alarm system; provided, that no town board shall exercise the power and authority granted by this subdivision, unless prior thereto the governing board of each village within such town shall by appropriate action have signified its consent thereto, and if the governing board in any village does not consent thereto, the central fire alarm system shall exclude said village and the cost thereof will be assessed against the real property of the town outside said village.

12. Appropriations for Independence day, Memorial day, Columbus day and Veterans day. Any town may appropriate annually such sums as it may deem appropriate for the purpose of defraying the expenses of the proper observance of Independence day, Memorial or Decoration day, Columbus day and Veterans day in such proportion as it may determine. Any town of the first class, or, any town having a population of five thousand inhabitants or more, excepting any such town having a population of two hundred twenty-five thousand inhabitants or more, according to the latest federal census, in which one or more posts, camps or chapters of the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., the Marine Corps League, the Military Order of the Purple Heart, Inc., the American Legion, the Disabled American Veterans, AMVETS, American Veterans of World War II, Masonic War Veterans of the State of New York, Inc., Veterans of World War I of the United States of America Department of New York, Inc., China-Burma-India Veterans Association, Inc., Polish-American Veterans of World War II, Amsterdam, N. Y., Inc., Polish-American Veterans of World War II, Schenectady, N.

Y., Inc., the Sons of Union Veterans, Vietnam Veterans of America, World War Veterans Club of Lindenhurst, Inc. or the Eastern Paralyzed Veterans Association exists, may appropriate annually an amount not to exceed five thousand dollars for such purpose, and any town having a population of two hundred twenty-five thousand inhabitants or more, according to the latest federal census, in which one or more such posts, camps or chapters exists may annually appropriate an amount not to exceed five thousand dollars for such purpose, and any town which has a population of five hundred thousand inhabitants or more, according to the latest federal census, in which one or more such posts, camps or chapters exists may annually appropriate an amount not to exceed ten thousand dollars for such purpose. Any moneys appropriated pursuant to the provisions of this subdivision shall be a general town charge, except that in any town having a population of two hundred twenty-five thousand inhabitants or more there shall be a charge on that portion of the town outside of any village therein and shall be assessed, levied and collected from real property outside of any such village. Such sum when collected shall be paid to the supervisor of such town and be disbursed by him in such manner as the town board of such town may direct upon vouchers properly receipted and audited by the town board of such town; except that in any town in which there may be a post, camp or chapter of the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., the Marine Corps League, the Military Order of the Purple Heart, Inc., the American Legion, the Disabled American Veterans, AMVETS, American Veterans of World War II, Masonic War Veterans of the State of New York, Inc., Veterans of World War I of the United States of America Department of New York, Inc., China-Burma-India Veterans Association, Inc., Polish-American Veterans of World War II, Amsterdam, N. Y., Inc., Polish-American Veterans of World War II, Schenectady, N. Y., Inc., the Sons of Union Veterans, Vietnam Veterans of America, World War Veterans Club of Lindenhurst, Inc. or the Eastern Paralyzed Veterans Association, in any such town, the commanders and quartermasters of such posts, camp or chapter may direct the manner and extent of such observance and the supervisor shall pay the expenses thereof upon the

order or orders of the commander or quartermaster of such post, camp or chapter, which orders shall be his vouchers for such payment, and in case there may be two or more posts, camps or chapters of the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., the Marine Corps League, the Military Order of the Purple Heart, Inc., the American Legion, the Disabled American Veterans, AMVETS, American Veterans of World War II, Masonic War Veterans of the State of New York, Inc., Veterans of World War I of the United States of America Department of New York, Inc., China-Burma-India Veterans Association, Inc., Polish-American Veterans of World War II, Amsterdam, N. Y., Inc., Polish-American Veterans of World War II, Schenectady, N. Y., Inc., the Sons of Union Veterans, Vietnam Veterans of America, World War Veterans Club of Lindenhurst, Inc. or the Eastern Paralyzed Veterans Association, in any such town, the commanders and quartermasters of such posts, camps or chapters by concurrent action, shall direct the supervisor of such town what proportion of such moneys so raised shall be expended by each of such posts, camps or chapters which proportion shall be paid by such supervisor upon the order or orders of the commander and quartermaster of each of such posts. In case there is a post, camp or chapter in a town adjoining a town in which no post, camp or chapter is located, whose membership includes at least three residents of such town having no post, camp or chapter, the post, camp or chapter shall appoint a committee of not less than three of its members who are residents of the said adjoining town in which the post, camp or chapter is not located, and the supervisor of said town shall pay the expenses of observance of Independence day, Memorial or Decoration day and Veterans day upon the order or orders of said committee or a majority thereof, which orders shall be his vouchers for such payment.

12-a. The town board of any town adjoining or contiguous to any camp established and operating for the training of persons in the military service of the United States may establish a recreation center in the town and may appropriate a sum not exceeding one thousand dollars in any year for the rental, equipment and maintenance of rooms. Any resolution

authorizing the appropriation of town funds for such purposes shall be subject to a permissive referendum as provided in article seven of this chapter.

13. Appropriations for rooms for patriotic organizations. In any town in which there may, now or hereafter, be one or more posts of the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., Disabled American Veterans, the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., the Marine Corps League, the Military Order of the Purple Heart, Inc., AMVETS, American Veterans of World War II, Masonic War Veterans of the State of New York, Inc., Veterans of World War I of the United States of America Department of New York, Inc., China-Burma-India Veterans Association, Inc., Polish-American Veterans of World War II, Amsterdam, N.Y., Inc., Polish-American Veterans of World War II, Schenectady, N.Y., Inc., World War Veterans Club of Lindenhurst, Inc., the American Legion, the Eastern Paralyzed Veterans Association, the Vietnam Veterans of America, the Army and Navy Union of the United States, the American Gold Star Mothers, Inc., Regular Veterans Association, Inc., the 369th Veterans Association, Inc., the Tri-County Council of Vietnam Veterans, the National Congress of Puerto Rican Veterans, the Fleet Reserve Association, the Navy Seabee Veterans of America, the Korean War Veterans Association, the Women's Army Corps Veterans Association, the 82nd Airborne Division Association, the Empire State Chapter No. 120 of the Retired Enlisted Association, the National Amputation Foundation, or the Navy Club of the U.S.A., the town board may appropriate a sum not exceeding five hundred dollars for each post in any year for the purpose of assisting in defraying the rental or maintenance of rooms for holding meetings of such post or posts, or both. If there be a post in a town adjoining a town in which no post is located, whose membership includes at least five residents of such town having no post, the town board of such town having no post may vote any sum of money, not exceeding one hundred twenty-five dollars in any year, for the purpose of assisting in defraying the rental or maintenance of rooms in such adjoining town as meeting places of each of the posts hereinbefore enumerated. Claims for such rental or rentals

shall be made by the organizations interested, and shall be submitted to the town board for audit in the same manner and at the same time as other claims against the town.

14. Publicity fund. a. Upon the adoption of a resolution, the town board of any town may establish a publicity fund to be expended for the purpose of advertising the advantages of such town as a summer or winter resort, or for commemoration programs of historical events, or otherwise, including the necessary and legitimate expense of securing a designation of such town as the place for holding the convention or meeting of any organization or society and for such additional purposes as may tend to promote the general, commercial and industrial welfare of the town. Such an appropriation shall not exceed the sum of twenty-five thousand dollars annually provided, however, that the town board of any town (1) upon the adoption of a resolution, subject to a permissive referendum, may appropriate an amount in excess of twenty-five thousand dollars for such publicity fund. Provided, however, that the town board of a town with a population of fifty thousand or less may not appropriate more than fifty thousand dollars to a publicity fund unless such town board adopts a resolution appropriating funds in excess of fifty thousand dollars and such resolution is subject to a mandatory referendum. The amount appropriated shall continue to be so appropriated until the adoption of a resolution, subject to a permissive referendum, to discontinue the same.

b. Notwithstanding the provisions of this subdivision, the town of Webb in the county of Herkimer, may, upon adoption of a resolution subject to a permissive referendum, appropriate a sum in excess of three thousand dollars but not in excess of one hundred fifty thousand dollars to its publicity fund and may continue to make such appropriations, until the adoption of a resolution, also subject to a permissive referendum, to discontinue the same.

c. The amount so appropriated when collected shall be paid over to the supervisor for the payment of claims incurred and after duly itemized and verified vouchers therefor have been audited by the town board.

14-a. Wherever it is provided in this chapter that a notice or a copy of a notice be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter, the town board may direct the same to be posted in addition in such other place or places within or without the territory affected as it may deem to be in the public interest but failure to accomplish such additional posting shall not affect the validity of the proceedings.

15. Appropriation for construction of conning towers. If requested by the conservation department, the town board of any town, not within the forest preserve, may appropriate a sum of money for the construction of a conning tower, to be constructed by the conservation department and to be used as a look-out in aid of the suppression of forest fires, but the whole amount appropriated in any one year shall not exceed five hundred dollars. The money so appropriated when collected, shall be disbursed by the supervisor on the order of the conservation department.

15-a. Purchase of equipment for prevention of forest fires. Any town may appropriate not exceeding the sum of one thousand dollars in any one year without the vote of a town election for the purpose of purchasing equipment for the prevention of forest fires within the town. Any such equipment shall be under the direction and supervision of the town board.

16. Traffic control, signals and standards. Any town may purchase, lease, install and maintain traffic signals and standards, for the control of traffic upon streets and highways outside the limits of any incorporated village or city, and the town board may authorize the town superintendent to purchase or lease such traffic signals and standards and materials necessary for the installation and use thereof, without prior approval of the board in an amount to be fixed by the board not exceeding one thousand dollars in any one year. The cost of erection and maintenance of such signals and standards shall be a town charge.

17. Citizens advisory committee on capital improvements. The town board of any town having a population of five thousand or more as shown by the latest federal census, by resolution may appoint a committee of

citizens to act in an advisory capacity to the town board on the planning, construction, reconstruction, undertaking or acquisition of capital improvements. The members of such committee shall serve without compensation and it shall be the duty of such advisory committee to meet, consult and advise with the officers named in the resolution. Such advisory committee shall have no powers other than advisory. The town board may authorize the payment of the just and reasonable actual expenses of the members of such advisory committee.

17-a. Historic places. The town board may provide for the preservation and protection of places, buildings, works of art and other objects having a special character or aesthetic interest or value and also may provide for appropriate and reasonable control of the use or appearance of neighborhood private property within public view. Any such measures, if adopted in the exercise of police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property, shall provide for due compensation, which may include the limitation or remission of taxes.

17-b. Cultural development. To promote the cultural development of the residents of the community, the town board may appropriate and expend funds for promotion of literary, graphic, dramatic and performing arts by way of demonstrations, performances and exhibits of art and art forms.

18. Control of white pine blister rust. If requested by the conservation department, any town may appropriate a sum not exceeding one thousand dollars in any one year for the eradication or control of white pine blister rust. When such an appropriation has been made, the town clerk shall deliver to the supervisor and to the conservation department a certified copy of the resolution making the appropriation. The supervisor shall present a certified copy thereof to the board of supervisors and the amount thereof shall be levied upon the taxable property of the town in the same manner as other town charges are levied and when collected shall be paid to the supervisor. When such funds are available, the supervisor shall, in writing, notify the conservation department of the fact and thereafter the conservation department may

provide for the disbursement thereof in such manner as it shall deem necessary for eradication and control.

18-a. Appropriation for deer food. If requested by the conservation department, any town may appropriate a sum not in excess of two hundred fifty dollars in any one year to provide food for wild deer at times when such deer are unable to obtain natural food. Distribution of such food shall be under the supervision of the conservation department.

18-b. Any town, where there is an infestation of the golden nematode, may appropriate a sum not exceeding five thousand dollars (\$5,000), in any one year for the eradication or control of the golden nematode. When such appropriation has been made, the town clerk shall deliver to the supervisor and to the state department of agriculture and markets a certified copy of the resolution making the appropriation. The supervisor shall present a certified copy thereof to the board of supervisors and the amount thereof shall be levied upon the taxable property of the town in the same manner as other town charges are levied, and when collected shall be paid to the supervisor. When such funds are available, the supervisor shall, in writing, notify the state department of agriculture and markets and thereafter the state department of agriculture and markets may provide for the disbursement thereof in such manner as it shall deem necessary for eradication and control.

19. Contracts for lighting of certain improved highways and bridges. Any town may contract for the lighting of such improved state highways and county roads, as defined in section three of the highway law, and for lighting the bridges on such highways, in the town outside of incorporated villages, as the town board deems necessary for the safety or convenience of the public. The contract for any such purpose or purposes shall be upon such terms and for such time or period not exceeding ten years as the board deems proper or expedient.

19-a. Appropriation for public health. The town board of any town, the local board of health of which has been lawfully abolished, may, in lieu of employing a public health nurse or public health nurses in the manner

authorized by section twenty-b of the public health law, contract with any non-profit institution or agency, wholly or partly under private control, organized to furnish visiting nursing or public health services and agree to pay fees specified in the said contract for such services furnished to inhabitants of the town for which the contracting institution or agency shall not otherwise receive payment. Such contracts shall provide that the contracting institution or agency will comply with any rules promulgated by the county health commissioner. Such town boards are authorized and empowered to appropriate the sums required to be paid to such institutions and agencies under the terms of such contracts and to raise the amount thereof by taxation.

19-b. Town medical and dental center. May create, establish, construct and reconstruct, repair, operate, equip and maintain a suitable building for a town medical and/or dental center or facility that meets the requirements of the public health law and the sanitary code of the state of New York and to acquire by purchase, lease, gift or condemnation necessary lands therefor. Two or more adjoining towns may combine in the establishment of such a center and the portion of expense chargeable to each town shall be fixed by agreement of the respective town boards.

19-c. Psychiatric rehabilitation programs for mentally ill, mentally defective, epileptic and emotionally disordered persons. May contract on an annual basis with the county in which the town is located to furnish and operate psychiatric rehabilitation programs in the town for the county. Any such contract shall be subject to the prior approval of the commissioner of mental hygiene. Notwithstanding the provisions of any other law, a county, acting through its mental health board, may contract with a town within the county for the furnishing of community mental health services authorized by the community mental health services act, as set forth in article eleven of the mental hygiene law, to be rendered by the town for the county to residents of the town.

19-d. Contracts for physician services. Notwithstanding the provisions of any law to the contrary, the town board of any town may contract on an annual basis for the services of a licensed physician, whether or not he resides within such town, to render medical care and treatment to the

inhabitants thereof and upon such terms and conditions as the town board may prescribe. Such town board is authorized and empowered to appropriate the sums required to be paid under the terms of such contract and to raise the amount thereof by taxation.

A town board desiring to contract for the services authorized in this subdivision is further authorized and empowered to appropriate and expend a sum, not in excess of five thousand dollars, to be raised by taxation, for the purposes of advertisement of any proposed contract, the terms and conditions thereof or incidental thereto, and solicitation of offers of acceptance from any qualified physician. Such advertisement and solicitation may be accomplished in any manner the board deems appropriate.

19-e. Psychiatric clinics. Any town may appropriate a sum not in excess of ten thousand dollars in any one year for a psychiatric clinic for use in the clinic's annual budget, provided said corporation is organized under the not-for-profit corporation law and approved by and under the jurisdiction of the department of mental hygiene and which provides psychiatric and psychological counselling and therapy for children under the supervision of qualified personnel for the residents of the town.

20. Band concerts. Any town may provide for public band concerts to be held at any place within the town annually between the first day of June and the fifteenth day of September.

20-a. Dumping facilities. May contract with any village which has a dumping ground for the use of such dumping ground by persons living in such town for the disposal of their garbage, ashes, rubbish and other waste matter. The term of any such contract shall not exceed ten years and the consideration for such use shall be paid in equal annual installments. Notwithstanding the provisions of any other law, the governing board of any village having a dumping ground shall have power to enter into any such contract on behalf of the village.

20-b. Combustible liquids. The town board may provide for the

regulation of underground areas used for the storage of combustible liquids.

21. Town physician. May establish the office of town physician in any town in which there is not a practicing physician, fix the salary and appoint a duly qualified and licensed physician upon condition that he shall reside in the town. Two or more adjoining towns may combine in the employment of such a physician who shall reside in one of the towns so combining. In such case the portion of the salary chargeable to each town shall be fixed by agreement of the respective town boards.

21-a. Establishment of department of public works in certain towns. 1. The town board of any town of the first class or of any town having a population of ten thousand or more as shown by the latest federal census, and in which town the office of town superintendent of highways is an appointive office, may adopt a resolution establishing a department of public works, and may appoint and fix the salary of a commissioner of public works, who shall be the administrative head of the department.

2. The commissioner of public works shall be appointed on the basis of his administrative experience and qualifications for the duties of the office. Such commissioner of public works shall hold office until the first day of January next succeeding the first bi-annual town election held after his appointment and thereafter such commissioner of public works shall hold office for the term of two years.

2-a. The town board of any town in Suffolk county in which the office of the town superintendent of highways is an elective or appointive office may adopt a resolution establishing a department of public works and providing that the town superintendent of highways shall be the administrative head thereof.

3. Upon the establishment of a department of public works, as above provided, the town board by appropriate resolution may transfer to said department the functions of one or more of the departments, bureaus, improvement districts and services that are now or may hereafter come

under the jurisdiction of the town board, and such other duties in the nature of public works as may be prescribed by law or the town board may determine, not inconsistent with law. All costs and expenses incurred by the department or its officers, agents and employees on behalf of a special improvement district, shall be charged against such district and paid from the funds duly appropriated for the purpose of such district.

4. Whenever such town board shall transfer to a department of public works any department, bureau, improvement district or service as in this section provided, the employees of such department, bureau, improvement district or service shall be continued as employees in the department of public works, with the same classification, pensions and retirement rights and privileges as they had immediately prior to such transfer, provided, however, that nothing herein contained shall deprive the town board of any power it now has with respect to any such employees.

5. Nothing herein contained shall be construed to delegate or transfer any power of the town board contained in sections sixty-one, sixty-four and articles twelve, fourteen and fifteen of this chapter.

22. Certain expenditures town charges. Except as otherwise provided by law, any expense actually and necessarily incurred by the town pursuant to the provisions of subdivisions twelve through twenty-one inclusive of this section shall be a town charge and the amount thereof shall be assessed and levied upon the taxable property of the town and collected in the same manner as other town charges are assessed, levied and collected.

23. General powers. Shall have and exercise all the powers conferred upon the town and such additional powers as shall be necessarily implied therefrom.

24. Shall have the power to impose a fifteen per cent admission tax at all pari-mutuel tracks in such town, where such track is leased from a tax exempt organization.

25. Use of agricultural assessment for improvement district charges.

May adopt a resolution authorizing the application of the agricultural assessment established pursuant to article twenty-five-AA of the agriculture and markets law to the special assessment or special ad valorem levy made on behalf of an ambulance, water, lighting, fire protection, sewer, or sanitation district on land located within the ambulance, water, lighting, fire protection, sewer, or sanitation district and benefitting from such agricultural assessment. A copy of this resolution shall be delivered to the assessor or assessors of the town and shall be effective on the assessment roll prepared on the basis of the next taxable status date following its adoption. A resolution repealing this authorization shall similarly be delivered to the assessor or assessors of the town and shall be effective on the assessment roll prepared on the basis of the next taxable status date following its adoption.

*** § 64-a. Payment in lieu of taxes for property acquired for park or recreational purposes.** The town of Hempstead having acquired certain property for park or recreational purposes in the Lido Beach-Point Lookout area shall have the power and authority with respect to such property, to pay or transfer out of any town funds available to it, annual sums in lieu of taxes to the affected taxing jurisdiction, in order that none of such taxing jurisdiction shall suffer an inequitable loss of revenue by virtue of such park or recreational program; provided further, that the amount so paid or transferred for any year shall not exceed the sum last levied for the benefit of such taxing jurisdiction as an annual tax on such property prior to the time of its acquisition for such purpose or purposes.

As used in this section, the term "taxing jurisdiction" means any municipal corporation or district corporation, including any school district or any special district, having the power to levy and collect taxes and benefit assessments upon real property in the Lido Beach-Point Lookout area or in whose behalf such taxes or benefit assessments may be levied or collected.

* NB Section operative only to and including June 30, 2027

* § 64-a. Powers of town with respect to municipal deposits in

national banks in liquidation. Whenever the depositors and other unsecured creditors of a national bank, representing at least sixty per centum in amount of its total net unsecured liabilities as shown by the books of the bank, acting pursuant to section two hundred seven of the bank conservation act, have waived and released to the bank a certain percentage of their deposits and/or other claims, the town board of a town having municipal funds deposited in such bank, upon determining by majority vote that it is for the best interest of the town, may authorize the supervisor of such town to execute a waiver and/or release, similar in form to those executed by such other depositors, by which it shall waive and/or release unto such bank a like percentage in amount of its net unsecured claim against the bank as shall have been theretofore waived and/or released by the other depositors and/or creditors representing at least sixty per centum in amount of its total net unsecured liabilities, as aforesaid. The certificate of the conservator or other public official in charge of such bank to the effect that waivers and/or releases have been so executed to the amount of sixty per centum of the total net unsecured liabilities of such bank, shall constitute the necessary condition precedent to such action by the town board of the town. Neither the supervisor nor any member of a town board shall be liable to the town for any authorization given or release or waiver executed pursuant to the provisions of this section.

* NB Effective July 1, 2027

*** § 64-b. Powers of town with respect to municipal deposits in national banks in liquidation.** Whenever the depositors and other unsecured creditors of a national bank, representing at least sixty per centum in amount of its total net unsecured liabilities as shown by the books of the bank, acting pursuant to section two hundred seven of the bank conservation act, have waived and released to the bank a certain percentage of their deposits and/or other claims, the town board of a town having municipal funds deposited in such bank, upon determining by majority vote that it is for the best interest of the town, may authorize the supervisor of such town to execute a waiver and/or release, similar in form to those executed by such other depositors, by which it shall waive and/or release unto such bank a like percentage in

amount of its net unsecured claim against the bank as shall have been theretofore waived and/or released by the other depositors and/or creditors representing at least sixty per centum in amount of its total net unsecured liabilities, as aforesaid. The certificate of the conservator or other public official in charge of such bank to the effect that waivers and/or releases have been so executed to the amount of sixty per centum of the total net unsecured liabilities of such bank, shall constitute the necessary condition precedent to such action by the town board of the town. Neither the supervisor nor any member of a town board shall be liable to the town for any authorization given or release or waiver executed pursuant to the provisions of this section.

* NB Effective until June 30, 2027; then becomes § 64-a

*** § 64-c. Payment in lieu of taxes for property acquired for park and recreational purposes.** The town of Hempstead, having acquired certain property for park and recreational purposes in Lido Beach known as the Lido Golf Club and the Lido Cabana Club shall have the power and authority with respect to such property, to pay or transfer out of any town funds available to it, annual sums in lieu of taxes to the affected taxing jurisdiction, in order that none of such taxing jurisdiction shall suffer an inequitable loss of revenue by virtue of such park and recreational program; provided further, that the amount so paid or transferred for any year shall not exceed the sum last levied for the benefit of such taxing jurisdiction as an annual tax on such property prior to the time of its acquisition for such purposes.

As used in this section, the term "taxing jurisdiction" means any municipal corporation or district corporation, including any school district or any special district, having the power to levy and collect taxes and benefit assessments upon real property in Lido Beach or in whose behalf such taxes or benefit assessments may be levied or collected.

That the payments or transfers made pursuant to the power and authority granted herein with respect to such property shall continue notwithstanding that the legislature of the state of New York may

hereinafter alter, modify or replace the current method of financing of public education and notwithstanding that a court of competent jurisdiction may hereinafter order that such method of financing public education be altered, modified or replaced.

* NB Expires July 1, 2027

§ 64-d. Payment in lieu of taxes for property acquired for open space purposes. The town of Southampton, Suffolk county, shall have the power and authority with respect to property acquired for open space purposes to pay or transfer out of any town funds available to it, annual sums in lieu of taxes to the affected taxing jurisdiction, in order that none of such taxing jurisdictions shall suffer an inequitable loss of revenue by virtue of such open space acquisition. The amount so paid or transferred for any year shall not exceed the sum last levied for the benefit of such taxing jurisdiction as an annual tax on such property prior to the time of its acquisition for such purposes. As used in this section, the term "taxing jurisdiction" means any municipal corporation or district corporation, including any school district or any special district, having the power to levy and collect taxes and benefit assessments upon real property or in whose behalf such taxes or benefit assessments may be levied or collected. That the payments or transfers made pursuant to the power and authority granted herein with respect to such property shall continue notwithstanding that the legislature of the state of New York may hereinafter alter, modify or replace the current method of financing of public education and notwithstanding that a court of competent jurisdiction may hereinafter order that such method of financing public education be altered, modified or replaced.

§ 64-e. Peconic Bay region community preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Peconic Bay region" means the towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Water quality improvement project" means projects designed to improve the quality of drinking and surface waters and projects, including operational expenses, related to the operation of the Peconic Bay National Estuary Program, as designated by the United States Environmental Protection Agency.

(f) "Disadvantaged communities" shall mean a community that is identified pursuant to section 75-0111 of the environmental conservation law.

2. The town board of any town in the Peconic Bay region is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-D of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition or water quality improvement project authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section. Where a town finances an acquisition or water quality improvement project, in whole, or in part, pursuant to the local finance law, the resolution authorizing such indebtedness shall be accompanied by a report from the town supervisor demonstrating how said indebtedness will be repaid by the fund. Said report shall include an estimate of projected revenues of the fund during the period of indebtedness. The report shall also provide an accounting of all other indebtedness incurred against the fund to be repaid for the same period. The town board shall make findings by

resolution that there will be sufficient revenue to repay such indebtedness in its entirety from the fund before authorizing such indebtedness.

3. The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, (d) to provide a management and stewardship program for such interests and rights consistent with subdivisions nine and nine-a of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to implement water quality improvement projects in accordance with a plan to preserve community character. A maximum of twenty (20) percent of the fund may be utilized for the implementation of water quality improvement projects; provided that where such water quality improvement funds are utilized for the operation of the Peconic Bay National Estuary Program, the use of such funds shall only be utilized to match federal, state, county, or other public or private funds on a dollar for dollar basis, not to exceed ten (10) percent of the annual amount appropriated for water quality improvement projects. Unused funds allocated for water quality improvement projects pursuant to this subdivision may be carried forward from year to year for utilization in future budgets. In towns with one or more disadvantaged communities, not less than ten (10) percent of the annual proceeds of the fund shall be utilized to benefit such disadvantaged communities. If the implementation of the community preservation project plan, adopted by a town board, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

3-a. Preliminary and incidental costs in connection with the acquisition of interests or rights in real property, pursuant to subdivision three of this section, shall be deemed part of the cost of the acquisition for which they were incurred. Such expenditures may include any administrative or other expenditures directly arising therefrom. No expenditure shall be charged to the fund, unless authorized by law. A full accounting of such costs for each acquisition of land shall be provided to the town board.

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands provided, however, that farm buildings and structures used for the marketing of farm products produced on such agricultural lands shall be permitted; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline including those at significant risk of coastal flooding due to projected sea level rise and future storms; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; (n) preservation of lands necessary to protect fisheries and water dependent uses essential to maintain and enhance maritime heritage; (o) preservation of lands that contain significant cultural resources including the aboriginal lands of indigenous peoples, including but not limited to, burial sites, settlements, and lands utilized for ceremonial purposes; and (p) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt. Preservation of community character shall

also include the protection and improvement of the quality of all water resources.

5. The town board of any town in the Peconic Bay region which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property or water quality improvement projects using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation and land preservation activities or water quality improvement activities, or historic preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer.

6. The town board of any town in the Peconic Bay region which has established a community preservation fund shall, by local law, adopt a community preservation project plan. This plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in the plan. The plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Said plan shall also list every water quality improvement project which the town plans to undertake pursuant to the community preservation fund and shall state how such project would improve existing water quality. Projects which have as their purpose the accommodation of new growth as opposed to the remediation of water quality shall not qualify for funding under this section. Funds from the community preservation fund

may only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of the plan shall be filed with the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Said plan shall be completed at least sixty days before the submission of the mandatory referendum required by section one thousand four hundred forty-nine-bb of the tax law. As part of, or in addition, to said community preservation fund project plan, each town board may also adopt a management and stewardship plan for interests or rights in real property acquired pursuant to this section. No monies from the fund shall be expended for management and stewardship, except as approved in said plan. Said plan may provide management and stewardship projects for up to a three year period and shall provide a description and estimated cost for each project. Said plan shall be approved and adopted by local law and may be updated from time to time at the discretion of the town board. Only management and stewardship projects permitted pursuant to subdivision nine-a of this section shall be eligible to be included in the plan.

7. The town board of any town in the Peconic Bay region which has established a community preservation fund pursuant to this section shall study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

8. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section

two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of a town board approving an acquisition of land pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

9. (a) Lands acquired pursuant to this section shall be administered and managed in a manner which maximizes public use and enjoyment in a manner compatible with the character of such lands.

(b) Lands acquired for open space purposes shall preserve the native biological diversity of such lands.

(c) With regard to lands acquired for open space purposes improvements shall be limited to minimal improvements that enhance access for passive use of such lands. Such improvements shall not degrade the ecological value of the land or threaten essential wildlife habitat.

(d) Historic and cultural property shall be preserved consistent with accepted standards for historic preservation. Adaptive reuse of such properties shall be consistent with the historic character and prior use of the property and shall be consistent with all local land use plans and regulations. Such historic and cultural properties shall maximize public use to the extent practicable.

(e) In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engaged in preservation activities to manage lands, including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any historic, cultural, or natural resources associated therewith. Where revenues are generated by such corporations on such lands pursuant to such agreements, disposition of such revenues shall be governed by the town pursuant to resolution or local law.

9-a. (a) Management and stewardship funds may only be expended for

projects related to lands acquired for open space preservation and historic preservation purposes. Lands acquired for any other purpose shall not be eligible for management and stewardship funds. In the case of lands acquired for open space preservation purposes, management and stewardship projects shall be only expended for: (1) projects which promote the protection or enhancement of the natural, scenic, and open space character for which the interests or rights in real property were acquired; or (2) minimal improvements as permitted by subdivision nine of this section; or (3) restoration of acquired real property to its natural state including the demolition of existing buildings and structures.

(b) In the case of interests or rights in real property acquired for historic preservation purposes, funds may be expended for the restoration, rehabilitation, or replacement of buildings and structures consistent with accepted standards for historic preservation.

(c) Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the management and stewardship portion of the fund, except that in the case of historic properties, where the town has entered into an agreement with a not-for profit corporation for the management of such properties as permitted by subdivision nine of this section, up to twenty (20) percent of the management and stewardship portion of the fund or two (2) percent of the total annual revenue of the fund, may be dedicated to the operation and maintenance of stewardship properties managed by such corporations. Where a town enters into an agreement for the management of an historic property with a not-for-profit corporation and the town allocates management and stewardship funds for the operation and maintenance of such historic property, said corporation shall annually provide for a full accounting of such funds to the town board.

(d) Any project funded pursuant to this subdivision, except operation and maintenance expenses permitted pursuant to paragraph (c) of this subdivision, must have a useful life of five years or more under section 11.00 of the local finance law.

(e) Any expenditure from the fund for a purpose other than that permitted, herein, shall be deemed to be prohibited.

10. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the legislature. Nothing in this section shall preclude a town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by a town acquired pursuant to this section, where said sale is made by a central bank created by a town, pursuant to a transfer of development rights program established by a town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund. Nothing in this section shall preclude a town from utilizing development rights acquired with monies from the fund from being utilized to provide community housing, provided that such development rights have not been expressly extinguished at the time of acquisition. The lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section. Where such development rights are sold, the proceeds from such sale shall be deposited in the community preservation fund. For purposes of this subdivision, "community housing" shall mean a primary residential property where the purchase price limit shall not exceed one hundred fifty percent of the purchase price limits established by the state of New York mortgage agency low interest rate loan program in non-target categories for the county.

11. Notwithstanding any provision of law to the contrary, towns may enter into intermunicipal agreements pursuant to article five-G of the

general municipal law for the following purposes:

(a) to jointly acquire interests or rights in real property, consistent with the purposes of this section, where the acquisition of such interests or rights promotes a regional public benefit for two or more towns pursuant to a regional plan;

(b) to provide for an independent financial audit of each town's fund; and

(c) to hire employees necessary to implement the provisions of this section.

12. Each town shall annually commission an independent audit of the fund. The audit shall be conducted by an independent certified public accountant or an independent public accountant. Said audit shall be performed by a certified public accountant or an independent public accountant other than the one that performs the general audit of each town's finances. Such audit shall be an examination of the fund and shall determine whether the fund has been administered consistent with the provisions of this section and all other applicable provisions of state law. Said audit shall be initiated within sixty days of the close of the fiscal year of each town and shall be completed within one hundred twenty days of the close of the fiscal year. A copy of the audit shall be submitted annually to the state comptroller and the town clerk. A copy of the audit shall be made available to the public within thirty days of its completion. A notice of the completion of the audit shall be published in the official newspaper of the town and posted on the official sign board of the town within ten days of its filing with the town clerk. Said audit and notice shall also be posted on the internet site for the town. The cost of the audit may be a charge to the fund.

13. The cost of employees and independent contractors to implement the provisions of this section, may only be paid for by the fund where the duties and responsibilities of said employees and independent contractors are directly dedicated to implementing the provisions of this section. Where such employees and independent contractors are not exclusively dedicated to implementing the provisions of this section, no more than the cost of the actual time expended directly dedicated to implementing the provisions of this section may be charged. Such costs

shall be expressly identified in the town budget and any plan adopted pursuant to this section before funds for such costs may be expended. In addition, such costs must be documented by a time accounting system, subject to audit. Costs relating to the activities of elected officials implementing the purposes of this section may not be a charge to the fund.

14. (a) The towns in the Peconic Bay region shall jointly establish, by intermunicipal agreement, the office of regional community preservation fund counsel to render legal opinions and interpretations to facilitate the efficient and consistent administration of the funds created pursuant to this section. All such opinions and interpretations rendered shall be published on each town's official website and shall be available to the public as a public record under article six of the public officers law.

(b) The towns in the Peconic Bay region shall jointly establish, by intermunicipal agreement, the Peconic Bay Region Advisory Committee to advise town boards regarding policy and administrative issues relating to funds established pursuant to this section. The committee shall consist of eleven (11) members. The members shall include each Town Supervisor or designee, a representative of village government to be jointly selected by the villages in the Peconic Bay region and five (5) members to be selected by the state legislative representatives representing the Peconic Bay region with expertise in land preservation, environmental protection, water quality protection, agriculture, historic preservation, or parks and recreation. The committee shall elect a chair from among its members. Said committee shall meet at least quarterly each year. The office of regional community preservation fund counsel shall attend the meetings of the committee and shall be further available to the committee chair for additional consultations. The committee shall be empowered to establish the rules for its operation, consistent with this section.

(c) The office and committee required to be established pursuant to this subdivision shall be implemented no later than ninety days after the effective date of this subdivision.

§ 64-ee. Peconic Bay region septic system replacement loan program. 1.

As used in this section, the following words and terms shall have the following meanings:

(a) "Peconic Bay region" means the towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

(b) "Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, which sometimes has an open bottom and/or perforated sides.

(c) "Septic system" means a system that provides for the treatment and/or disposition of the combination of human and sanitary waste with water not exceeding one thousand gallons per day, serving a single parcel of land.

(d) "Septic system project" means the replacement of a cesspool with a septic system, the installation, replacement or upgrade of a septic system or septic system components, or installation of enhanced treatment technologies, including an advanced nitrogen removal system, to significantly and quantifiably reduce environmental and/or public health impacts associated with effluent from a cesspool or septic system to groundwater used as drinking water, or a threatened or an impaired waterbody.

(e) "Fund" means the community preservation fund created pursuant to subdivision two of section sixty-four-e of this article.

2. The town board of any town in the Peconic Bay region may, by local law, establish a septic system replacement loan program using a portion of the water quality improvement monies from the fund, pursuant to paragraph (e) of subdivision three of section sixty-four-e of this article.

3. Such program may make loans to the owners of real property located within the town to finance the installation of septic system projects. The town shall establish priority areas within the town, which would receive water quality and public health benefits from the installation of septic system projects, for such loans in order to maximize environmental and public health benefits.

4. To be eligible for a loan pursuant to this section, the septic

system project shall be listed as an approved water quality improvement project in the town's community preservation project plan pursuant to subdivision six of section sixty-four-e of this article and be proposed for real property located within an established priority area of the town. Monies from the fund may only be loaned for projects which have been included in such plan and shall not include costs associated with routine maintenance such as a pump out of a septic tank.

5. A local law establishing the septic system replacement loan program shall provide for the criteria for making such loans and the terms and conditions for repayment of such loans provided that:

(a) For loans made to an owner of real property that is a commercial entity, not-for-profit organization, or entity other than an individual, the town board shall have the authority by local law to impose requirements on the maximum amount that may be borrowed through such loan, which may consider factors including but not limited to the property value, expected environmental and water quality benefit and existing indebtedness secured by such property.

(b) For loans made to an owner of real property who is an individual, the principal amount of each such loan, excluding interest, shall not exceed the lesser of ten percent of the appraised real property value or the actual cost of the septic system project including the costs of installation, necessary equipment, materials, and labor.

(c) No such loan shall be made unless such septic system project will significantly and quantifiably reduce environmental and/or public health impacts associated with effluent from a cesspool or septic system from the proposed real property site to groundwater used as drinking water, or a threatened or an impaired waterbody.

6. Every loan made under the septic system replacement loan program shall be repaid over a term not to exceed ten years. The town shall set a fixed rate of interest for the repayment of the principal amount of each loan at the time the loan is made provided that no interest rate shall exceed two and one-half percent and no applicant shall receive a loan more than once in any five-year period.

7. The principal amount of each such loan, excluding interest, shall

not exceed the actual cost of installing the septic system project, including the costs of necessary equipment, materials, and labor.

8. No such loan shall be made for a septic system replacement project unless such system is approved by the Suffolk County Department of Health Services.

9. The loan made under the septic system replacement loan program shall constitute a lien upon the real property benefitted by such loan.

10. The town may require the loan made under the septic system loan program to be repaid by the property owner through a charge on the real property benefitted by such loan. Such charge shall be on the real property and shall be levied and collected at the same time and in the same manner as town taxes, provided that such charge shall be separately listed on the tax bill, and provided further that in the event such charge should not be paid in a timely manner, no other municipal corporation shall be required to credit or otherwise guarantee the amount of such unpaid charge to the municipal corporation which authorized the loan, notwithstanding any provision of law to the contrary.

11. All revenues received by the town from the repayment of loans shall be deposited in the fund.

§ 64-f. Town of Brookhaven community preservation fund. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Brookhaven in the county of Suffolk.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

2. The town board of the town is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the town from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-B of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section. The town shall only adopt the local law authorized by this subdivision if it has incurred or authorized bonded indebtedness since nineteen hundred eighty for open space purposes equal to or greater than two hundred dollars per town resident, and shall also include in such calculation of its incurred or authorized bonded indebtedness, the incurred or authorized bonded indebtedness dedicated for open space purposes of the county of Suffolk within the town. The number of residents shall be determined by the 1990 U.S. Census. Said local law shall make a finding that the town has complied with the per resident financial commitment requirement of this subdivision.

3. The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, (d) to provide a management and stewardship program for such interests and rights consistent with subdivision nine of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be

utilized for the management and stewardship program, and (e) to make payments to school, fire, fire protection and ambulance districts in connection with lands owned by the state or any municipal corporation within the central pine barrens area as defined in subdivision ten of section 57-0107 of the environmental conservation law. Such payments may only be made to districts where more than twenty-five percent of the assessed value of such district is wholly exempt from real property taxation pursuant to the real property tax law because it is owned by the state or a municipal corporation. Not more than ten percent of the fund may be used for said purpose in any calendar year. Such payments from the fund shall not exceed the actual tax liability that would have been due if such lands of the state or of a municipal corporation had been subject to real property taxation. Where more than one district is eligible for such a payment under this subdivision, and such payment is less than the actual tax liability that would have been due if such lands of the state or a municipal corporation had been subject to real property taxation, the town shall apportion such annual payment on the basis of the total tax levied by each district within the town for the year such payment is made. Such payment made by the town shall be used solely to reduce the property tax liability of the remaining taxpayers of the district within said town. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or

endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

5. The town board of the town upon establishment of a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the town who shall serve without compensation. No member of the town board shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer.

6. The town board of the town upon establishment of a community preservation fund shall, by local law, adopt a community preservation project plan. This plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in the plan. The plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the

community preservation fund shall only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years. A copy of the plan shall be filed with the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of parks, recreation and historic preservation. Said plan shall be completed at least sixty days before the submission of the mandatory referendum required by section one thousand four hundred forty-one of the tax law.

7. The town board of the town upon establishment of a community preservation fund pursuant to this section shall study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

8. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing in this subdivision shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of land pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

9. Lands acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity

of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

10. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the legislature. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

§ 64-g. Town of Warwick preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Warwick.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

2. The town board of the town of Warwick is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-F of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section. The town of Warwick may only adopt the local law authorized by this subdivision if it has incurred or authorized bonded indebtedness since nineteen hundred eighty for open space purposes equal to or greater than two hundred dollars per town resident. The number of residents shall be determined by the 2000 U.S. Census. Said local law shall make a finding that the town has complied with the per resident financial commitment requirement of this subdivision.

3. The purposes of the fund shall be exclusively, (a) to implement a

plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision nine of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of aquifer recharge areas; (e) preservation of undeveloped beachlands or shoreline; (f) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (g) preservation of unique or threatened ecological areas; (h) preservation of rivers and river areas in a natural, free-flowing condition; (i) preservation of forested land; (j) preservation of public access to lands for public use including stream rights and waterways; (k) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (l) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

5. The town board which has established a community preservation fund

shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer.

6. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred forty-nine-bbbb of the tax law.

7. The town board which has established a community preservation fund pursuant to this section shall study and consider establishing a

transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

8. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of land pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

9. Lands acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision

that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

10. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the legislature. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

§ 64-h. Town of Red Hook preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Red Hook.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to

subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-eight-b of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Red Hook is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-1 of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this

section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of fresh and saltwater marshes or other wetlands;
- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;
- (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and
- (n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of

the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-eight-b of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed

twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land

used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

*** § 64-i. Town of Chatham preservation funds.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Chatham.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-b of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Chatham is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-two of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing

sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;
- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;

(m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and

(n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the

commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-b of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows

public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development

rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

* NB There are 2 § 64-i's

*** § 64-i. Town of Fishkill preservation funds.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Fishkill.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-b of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Fishkill is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-two of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this

section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;

- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;
- (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and
- (n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site

plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-b of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant

to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state

legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

* NB There are 2 § 64-i's

§ 64-j. Town of Northeast preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Northeast.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bb of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Northeast is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-three of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;
- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;
- (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and
- (n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board

shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-bb of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided

for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands

including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

§ 64-k. Peconic Bay region community housing fund. 1. Definitions. As used in this section, the following words and terms shall have the following meanings:

(a) "Peconic Bay region" means the towns of East Hampton, Riverhead,

Shelter Island, Southampton, and Southold.

(b) "Community housing" means a primary residential property for an eligible individual that does not exceed one hundred fifty percent of the purchase price limits established by the state of New York mortgage agency low interest rate loan program in non-target categories for Suffolk county in effect on the contract date for the sale of such property.

(c) "Board" means the advisory board created pursuant to subdivision six of this section.

(d) "Fund" means the community housing fund authorized pursuant to subdivision two of this section.

(e) "First-time homebuyer" means an eligible individual who has not owned a primary residential property and is not married to a person who has owned a residential property during the three-year period prior to his or her purchase of the primary residential property, and who does not own a vacation or investment home.

(f) "Primary residential property" means any one or two family house, townhouse, or condominium.

(g) "Eligible individual" means a household with an income that does not exceed one hundred percent of the income limits as established by the state of New York mortgage agency low interest rate loan program in non-target categories for Suffolk county in effect on the contract date for the sale of such property.

2. Fund authorized. The town board of any town in the Peconic Bay region is authorized to establish by local law a community housing fund, pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source, including but not limited to: (a) all revenues from the supplemental real estate transfer tax authorized by subdivision two of section fourteen hundred forty-nine-bb of the tax law; (b) all proceeds from any indebtedness or obligations issued pursuant to the local finance law for community housing opportunity purposes as authorized in subdivision three of this section; (c) general fund balances or surpluses; (d) any proceeds received by the local government from the sale or rental of community housing produced from revenues of the fund; (e) the repayment of any loans issued from proceeds of the fund; (f) any gifts of interests in

land or funds; and (g) any state or federal grants received by the town for providing affordable homes.

3. Purposes of the fund. The proceeds of the fund established pursuant to subdivision two of this section shall be utilized for the following purposes:

(a) the provision of financial assistance to first-time homebuyers who are residents of the town for the purchase of a first home. Such financial assistance may be in the form of a grant or a loan.

(1) A town may provide financial assistance for the purchase of a first home to a first-time homebuyer who is a resident of the town or who is employed in the town. A resident of the town shall include a person who is currently a resident of the town or a non-resident who has been a resident within the past five years.

(2) Such financial assistance shall not exceed fifty percent of the purchase price of the home.

(3) If such financial assistance is in the form of a loan, such loan shall be repayable to the town pursuant to the terms agreed to between the recipient and the town, provided that any loan shall be fully repaid by the recipient upon the resale of the home.

(4) For the purposes of calculating town tax liability for such property, only, the dollar amount of any financial assistance for the purchase of a first home made by the town pursuant to this section shall be subtracted from the full equalized assessed value of such property.

(5) All revenues received by the town from the repayment of a loan shall be deposited in the fund.

(6) A town may provide financial assistance for community housing in conjunction with a public/private partnership for employer assisted housing.

(b) the actual production of community housing for sale to eligible individuals by the town;

(c) the actual production of community housing for sale to eligible individuals in conjunction with a public/private partnership, where the private partner agrees to comply with the profit guidelines of the New York state affordable housing corporation and the provisions of this section;

(d) the actual production and maintenance of community housing for

rental to eligible individuals either by the town or the town housing authority; or in conjunction with a public/private partnership, where the private partner agrees to comply with the profit guidelines of the New York state affordable housing corporation and the provisions of this section;

(e) the rehabilitation of existing buildings and structures in the town for the purpose of conversion to community housing for sale or rental to eligible individuals;

(f) the acquisition of interests in real property in existing housing units, which will result in the production of community housing for sale or rental to eligible individuals; and

(g) the provision of housing counseling services by not-for-profit corporations who are authorized by the United States department of housing and urban development to provide such services.

4. Fund management. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited into the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any purpose authorized pursuant to this section. Monies from the fund may be utilized to repay indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

5. Eligible expenses. For the purposes of this section, eligible expenses relating to the production of community housing and the rehabilitation of existing buildings and structures under the fund shall include but not be limited to land acquisition, planning, engineering, construction costs, and other hard and soft costs directly related to the construction, rehabilitation, purchase or rental of housing pursuant to this section. All revenues received by the town from the sale or rental of community homes, or the repayment of loans shall be deposited in the fund.

6. Advisory board established. The town board of any town in the Peconic Bay region which has established a community housing fund pursuant to this section shall create an advisory board to review and

make recommendations regarding the town's community housing plan required by subdivision seven of this section. Such board shall consist of not less than seven nor more than fifteen legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. The board shall include a representative of: (a) the construction industry; (b) the real estate industry; (c) the banking industry; and three representatives of local housing advocacy or human services organizations. Where a village or villages, located within the town, have elected to participate in the fund, as provided in subdivision seven of this section, the board shall include at least one resident of a participating village or villages. Where an Indian nation is located within the boundaries of a town, the board shall include at least one member from such nation. The board shall act in an advisory capacity to the town board.

7. Adoption of housing plan. (a) Before a town in the Peconic Bay region may expend any funds pursuant to this section, the town board shall first adopt a town housing plan which establishes an implementation plan for the provision of community housing opportunities by the fund. Said plan shall be adopted by local law. Such plan shall adhere to the following smart growth principles:

(1) Public investment. To account for and minimize social, economic, and environmental costs of new development, including infrastructure costs such as transportation, sewers, and wastewater treatment, water, schools, recreation, and loss of open space and agricultural land;

(2) Development. To encourage development in areas where transportation, water, and sewage infrastructure are available or practical;

(3) Conservation. To protect, preserve, and enhance the state's resources, including agricultural land, forests, surface waters, groundwater, recreation and open space, scenic areas, and significant historic and archeological sites;

(4) Coordination. To promote coordination of state and local government decisions and cooperation among communities to work toward the most efficient, planned and cost-effective delivery of government services by, among other means, facilitating cooperative agreements among adjacent communities, and to coordinate planning to ensure

compatibility of one's community development with development of neighboring communities;

(5) Community design. To strengthen communities through development and redevelopment strategies that include integration of all income and age groups, mixed land uses, and compact development, traditional neighborhood development, planned unit development, open space districts, downtown revitalization, brownfield redevelopment, enhanced beauty in public spaces, and diverse and community housing in close proximity to places of employment, recreation, and commercial development;

(6) Transportation. To provide transportation choices, including increasing public transit and alternative modes of transportation, in order to reduce automobile dependency, traffic congestion, and automobile pollution;

(7) Consistency. To ensure predictability in building and land use codes; and

(8) Community collaboration. To provide for and encourage local governments to develop, through a collaborative community-based effort, smart growth plans that include long term land use and permit predictability and coordination, efficient decision making and planning implementation.

(b) Such plan may include the establishment of a map or maps that delineate the housing implementation recommendations proposed by the town.

(c) Such plan shall be updated at least once every five years.

(d) The town housing plan shall be an element of the town's comprehensive plan.

(e) Such plan shall ensure that all community housing created pursuant to this section remains affordable. Subsequent purchasers of such community housing shall have at the time of purchase, pursuant to the definition "eligible individual", an income that does not exceed one hundred percent of the income limits as established by the state of New York mortgage agency low interest rate loan program in non-target categories for Suffolk county.

(f) Such plan shall provide for the equitable distribution of community housing opportunities among all the communities of the town. The plan shall ensure that no community has an undue concentration of

community housing opportunities that would substantially alter the character of the community. In determining equitable distribution of community housing opportunities, existing community housing opportunities in a community shall be considered.

8. Village participation. (a) The participation of any village in the production of community housing authorized by this section shall be at the option of the village. In order to participate, a village shall pass a resolution opting into the program and shall submit said resolution to the town board.

(b) Where a village opts to participate pursuant to this subdivision, an intergovernmental agreement shall be executed pursuant to article five-G of the general municipal law or other applicable legal authority, in order to establish the rights and responsibilities of each government regarding community housing opportunities.

(c) Regardless of whether a village participates in the program authorized by this section, properties in the village shall be subject to the supplemental real estate transfer tax authorized by subdivision two of section fourteen hundred forty-nine-bb of the tax law.

*** § 64-1. Town of Chester preservation funds.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Chester.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bbb of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Chester is authorized to establish by

local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-four of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;
- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;
- (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and
- (n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-bbb of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize

monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the

town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however that (a) the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

* NB There are 3 § 64-1's

*** § 64-1. Town of Orangetown preservation funds.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Orangetown.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision

six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bbb of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Orangetown is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-four of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of freshwater marshes or other wetlands;
- (e) preservation of aquifer recharge areas;
- (f) preservation of undeveloped beach-lands or shoreline;
- (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (h) preservation of unique or threatened ecological areas;
- (i) preservation of rivers and river areas in a natural, free-flowing condition;
- (j) preservation of forested land;
- (k) preservation of public access to lands for public use including stream rights and waterways;
- (l) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law;
- (m) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt; and
- (n) preservation of land of exceptional scenic value.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on

proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-bbb of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period

not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land

used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however that (a) the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

* NB There are 3 § 64-1's

*** § 64-1. Town of Copake preservation funds.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Copake.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred fifty-b of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Copake is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-J of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages

therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;
- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including

stream rights and waterways;

(m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and

(n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed

with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred fifty-b of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows

public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development

rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

* NB There are 3 § 64-l's

§ 64-m. Town of Clarkstown preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Clarkstown.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred fifty-bb of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Clarkstown is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-K of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section

shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

5. Preservation of community character shall involve one or more of the following:

- (a) preservation of open space;
- (b) establishment of parks, nature preserves, or recreation areas;
- (c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;
- (d) preservation of lands of exceptional scenic value;
- (e) preservation of freshwater marshes or other wetlands;

- (f) preservation of aquifer recharge areas;
- (g) preservation of undeveloped beach-lands or shoreline;
- (h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- (i) preservation of unique or threatened ecological areas;
- (j) preservation of rivers and river areas in a natural, free-flowing condition;
- (k) preservation of forested land;
- (l) preservation of public access to lands for public use including stream rights and waterways;
- (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and
- (n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. The names and relevant qualifications of each member of the advisory board shall be posted and updated as necessary on the town's official municipal website maintained pursuant to article thirteen-E of the general municipal law. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

6-a. In the event of a vacancy on the advisory board established pursuant to this section, the town shall cause a notice of such vacancy to be posted in the official newspaper of such town, or if no newspaper has been designated as the official newspaper, in a newspaper having general circulation in such town. A copy of such notice shall also be

posted on the town's official municipal website maintained pursuant to article thirteen-E of the general municipal law.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred fifty-bb of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided

for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of the town board approving an acquisition of rights or interest in real property pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands

including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund may only be modified or extinguished as provided in section 49-0307 of such law. Nothing in this section shall preclude the town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however that (a) the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

§ 65. Actions and proceedings by and against towns. 1. Any action or special proceeding for or against a town, or for its benefit, and upon a contract lawfully made with it, or with any of its officers or agents authorized to contract in its behalf, or to enforce any liability

created, or duly enjoined upon it, or upon any of its officers or agents for which it is liable, or to recover damages for any injury to any property or rights for which it is liable, shall be in the name of the town. The town board of any town may authorize and direct any town officer or officers to institute, defend or appear, in any action or legal proceeding, in the name of the town, as in its judgment may be necessary, for the benefit or protection of the town, in any of its rights or property. It shall be the duty of any officer or officers so authorized and directed to institute said action or legal proceeding or to defend or appear therein, and the reasonable and necessary expense of such action or proceeding, or defense or appearance shall be a town charge. No such officer or officers, however, shall employ legal counsel except as directed by the town board.

2. The town may sue and be sued at law for the breach of any lawful contract entered into by it on behalf of a district wholly located in such town. Any sum of money recovered by it in such an action shall be paid over to the town treasury and be credited to such district. In the event of the entry of any judgment against such town by reason of a contract made on behalf of a district, the town shall forthwith satisfy and pay such judgment, interest and costs, and the amount so paid in satisfaction of any such judgment, interest and costs shall be a charge against such district and the amount thereof shall be assessed and levied against and collected from the several lots and parcels of land within the district in the same manner as other district charges, or the amount of any such judgment, including interest and costs, may be financed pursuant to the local finance law in which event amounts necessary to provide for the annual payments of principal of and interest on any obligations issued by the town for such purpose shall be assessed and levied against and collected from the several lots and parcels of land within the district in the same manner as other district charges.

3. On and after the first day of September, nineteen hundred thirty-nine, no action shall be maintained against a town upon or arising out of a contract entered into by the town unless the same shall be commenced within eighteen months after the cause of action thereof

shall have accrued, nor unless a written verified claim shall have been filed with the town clerk within six months after the cause of action shall have accrued, but no such action shall be brought upon any such claim until forty days have elapsed after the filing of the claim in the office of the town clerk.

§ 65-a. Liability of towns and town superintendents of highways in certain actions. 1. No civil action shall be maintained against any town or town superintendent of highways for damages or injuries to person or property sustained by reason of any highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge or culvert was actually given to the town clerk or town superintendent of highways, and that there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, or, in the absence of such notice, unless such defective, unsafe, dangerous or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence; but no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge or culvert, unless written notice thereof, specifying the particular place, was actually given to the town clerk or town superintendent of highways and there was a failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

2. No civil action shall be maintained against any town or town superintendent of highways for damages or injuries to person or property sustained by reason of any defect in its sidewalks or in consequence of the existence of snow or ice upon any of its sidewalks, unless such sidewalks have been constructed or are maintained by the town or the superintendent of highways of the town pursuant to statute, nor shall any action be maintained for damages or injuries to person or property sustained by reason of such defect or in consequence of such existence

of snow or ice unless written notice thereof, specifying the particular place, was actually given to the town clerk or to the town superintendent of highways, and there was a failure or neglect to cause such defect to be remedied, such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

3. The town superintendent of highways shall transmit in writing to the town clerk within ten days after the receipt thereof all written notices received by him pursuant to this section.

4. The town clerk of each town shall keep an indexed record, in a separate book, of all written notices which he shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice or snow upon any town highway, bridge, culvert or sidewalk, which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist, and the name and address of the person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defective, unsafe, dangerous or obstructed condition, or the location of accumulated snow or ice. The record of each notice shall be preserved for a period of five years after the date it is received.

§ 66. Place of trial of actions and proceedings against towns; inhabitants not incompetent to act thereat. 1. The place of trial of all actions and proceedings against a town or any of its officers or boards shall be the county in which the town is situated.

2. Upon the trial of any issue or the prosecution of any proceeding, or upon the taking or making of any inquisition, appraisal or award, or upon the judicial investigation of any facts whatever, to which issue, proceedings, inquest, investigation or award a town is a party, or in which a town may in any way be interested, no person shall be deemed incompetent as a judge, referee, commissioner, witness or juror by reason of his being an inhabitant, freeholder or taxpayer of the town.

§ 67. Presentation of claims for torts: actions against towns. 1. Any claim including a claim specified in section sixty-five-a of this chapter which may be made against the town or town superintendent of highways for damages for wrong or injury to person or property or for the death of a person, shall be made and served in compliance with section fifty-e of the general municipal law.

2. Every action upon such claim shall be commenced pursuant to the provisions of section fifty-i of the general municipal law.

3. This section shall not apply to actions upon claims for damages or compensation for property taken by condemnation for any public purpose.

§ 68. Compromise of actions, proceedings or claims. 1. The town board of any town may compromise or settle:

a. An action or proceeding against the town, with the approval of the court in which such action or proceeding is pending.

b. Any claim presented pursuant to section sixty-five-a or sixty-seven of this chapter, with the approval of a justice of the supreme court of the judicial district in which such town is located.

2. The order of the court or the justice approving such settlement or compromise may be granted upon the motion of an officer of the town designated by the town board, supported by the affidavit of such officer setting forth the cause of action or the claim against the town and also such other information which, in his opinion, will enable the court or the justice to arrive at a determination that such compromise or settlement is just, reasonable and to the interest of the town. Such officer may also present the affidavits of other persons in support of his motion. The court or the justice, in order to arrive at such a determination, may require such officer to present additional information by a supplemental affidavit or affidavits or may require

other persons to present additional information by their affidavits.

3. Upon obtaining the approval of the court or the justice, the town board may pay the amount of such compromise or settlement from funds or sources authorized pursuant to section one hundred twelve of this chapter.

4. Notwithstanding the foregoing provisions of this section, the town board of any town may compromise or settle any action, proceeding or claim against the town upon such terms as said board shall determine are just, reasonable and to the interest of the town.

§ 69. Duties of town board with respect to justice courts. Each town board shall provide for each justice of the peace such statutes, manuals, books, forms and supplies as may be necessary for the proper administration of his office. The expenses incurred in complying with the foregoing provisions shall be a town charge within the meaning of this chapter.

ARTICLE 5

ALTERATION OF BOUNDARIES

Section 73. Alteration of town boundries.

74. Effective date of alteration or division.

75. Disposition of town property on alteration of boundaries.

76. Apportionment of debts on division of towns.

77. Meetings of town boards on alteration of boundaries.

78. Right of action upon failure of towns whose boundaries are altered to agree upon disposition of assets and debts.

79. Application of article.

*** § 73. Alteration of town boundaries.** 1. A petition signed, and acknowledged or proved, or authenticated in the manner provided in article six for the purpose of altering the boundary lines or the division of a town may be filed as herein provided. The petition shall

describe the boundaries with common certainty and shall be accompanied by a map or survey showing the alteration proposed. The petition shall be signed, and acknowledged or proved, or authenticated by electors of each town affected as provided in section eighty-one of this chapter. The petition shall contain a statement of all town indebtedness and the reasons for the change.

2. The petition shall be filed with the clerk of the board of supervisors of the county not less than one hundred twenty days preceding a biennial town election. The board of supervisors shall fix a date for a public hearing thereon and the clerk of said board of supervisors shall prepare a notice of such hearing which shall recite the filing of the petition and the description of the proposed alteration. The notice shall be delivered to the town clerk of each town affected thereby, who shall cause the same to be published in a newspaper published in the town, or if none, in a newspaper having circulation in such town, once a week for four successive weeks next preceding the hearing and who shall also cause a copy of the notice to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter at least four weeks next preceding the hearing. In the event that the town maintains a website, such information may also be provided on the website. The cost of publication and posting shall be a town charge and due proof thereof shall be filed with the clerk of the board of supervisors at or before the hearing.

3. The public hearing may be held either before the board of supervisors or a standing or special committee of the board designated for the purpose. A report of proceedings before a committee shall be filed with the clerk of the board of supervisors within ten days after the public hearing. After such public hearing and upon the evidence given thereat, the board of supervisors may by a resolution adopted by a two-thirds vote of the total voting power of the board grant the petition and provide for the submission of a proposition to the electors of each town affected. A copy of the determination of the board of supervisors duly certified by the clerk of the board shall be filed in the office of the town clerk of each town affected. No county, city or

village boundary shall be altered under or pursuant to the provisions of this section.

4. The form of the proposition and the certificate thereof shall be in the manner provided in article three of the county law. When a town is to be divided, the board of supervisors shall determine the proposed name of each new town.

5. The proposition shall be submitted to the qualified electors of each town affected at the next biennial town election occurring not less than forty days after the adoption of the resolution of the board of supervisors. All provisions of the election law not inconsistent with this chapter shall apply to the submission of the proposition and to the canvass of the vote and certification of the result. If a majority of the votes cast on such proposition be in the affirmative, the proposition shall be adopted and the town or towns shall consist of the territory as so altered or divided.

6. The clerk of the board of supervisors shall cause a copy of the petition together with a copy of such map or survey, to be filed within sixty days after the adoption of the proposition with the secretary of state and state comptroller, and with the county clerk of the county.

* NB This section partially repealed by chapter 73/64. Certain provisions were retained by opinion of the Atty. Gen. (Inf.) October 1, 1981;(Inf.) 195/1975; and (Inf.) 143/1977.

*** § 74. Effective date of alteration or division.** 1. When only the boundary lines are altered between two towns, the same shall be effective on the first of July next succeeding the adoption of the proposition. The town board of the respective towns shall prior thereto make all necessary alterations in the election districts in such town. The term of any town officer shall not be abridged by reason of any alteration in town lines.

2. When a town is divided into two or more towns, the same shall be effective for the purposes of exercise of governmental functions on the

first day of January next succeeding the first biennial town election at which town officers for the new towns may be elected. All officers of the town in office on such first day of January shall continue in office, unless a vacancy occurs, until the expiration of the term for which elected or appointed. The town board shall prior to such effective date, make all necessary alterations or creation of new election districts as provided in the election law.

* NB This section partially repealed by chapter 73/64. Certain provisions were retained by opinion of the Atty. Gen. (Inf.) October 1, 1981;(Inf.) 195/1975; and (Inf.) 143/1977.

§ 75. Disposition of town property on alteration of boundaries. When the boundaries of a town owning real or personal property shall be altered, either by a division of a town into two or more towns or by the annexation of a part of its territory to another town or towns, the town boards of the several towns affected by such alterations shall meet as soon as may be after the first biennial town elections subsequently held in such towns, and shall make such agreement concerning the disposition to be made of such real and personal property, and the apportionment of the proceeds, as they shall deem equitable and take all measures, and execute all conveyances necessary to carry such agreement into effect. If no such agreement shall be made within six months after such town elections, the town board of each town in which any portion of such real property, or in whose possession any of such personal property shall be, shall, as soon as may be, sell and convey such part of the real property as shall be included within the limits of the town as fixed by such alteration, and such of the personal property as may be in its possession; and the proceeds arising from the sale shall be apportioned between the several towns interested therein, by the town boards of all the towns, according to the amount of the taxable property of the town divided or altered, as the same existed immediately before such division or alteration, to be ascertained by the last assessment-roll of such town. No town cemetery or burialground shall be sold or divided, but the same shall belong to the town within which it may be situated after a division of the town shall have been made, and no lots heretofore granted by the people of this state to any town for the support of the

gospel and of schools, commonly called the gospel and school lots, shall be so sold or apportioned.

§ 76. Apportionment of debts on division of towns. Debts owed by a town so divided or altered shall be apportioned in the same manner as the personal property of a town, and each town shall be charged with its share of the debts, according to the apportionment, and the amount of the unpaid taxes levied and assessed upon the taxable property of the town, divided or altered, before the division or alteration thereof, shall be apportioned between the several towns interested therein, according to the amount of taxable property in each town as the same existed before such division or alteration, to be ascertained by the last assessment-roll of the town. In making such division, there shall be set off to each town interested the unpaid taxes assessed and levied upon the real property within its borders and such as were assessed and levied upon personal property against persons or corporations who resided within its borders at the time of the assessment; and each town, to which the same are apportioned, shall have the same power, right and methods of collecting the same by warrant, action, sale or otherwise, as the town so divided or altered had, or would have had if such town had not been so divided or altered. Any such town having apportioned to it more than its proportion of unpaid taxes, according to the aforesaid taxable property, to be ascertained by the last assessment-roll of such town, shall pay to the other town or towns interested, such sum or sums as shall be necessary to make such apportionment correspond with the said taxable property, as ascertained by the said last assessment-roll of said town, before the said division or alteration.

§ 77. Meetings of town boards on alteration of boundaries. Whenever a meeting of the town boards of two or more towns shall be required, in order to carry into effect the provisions of this article, such meeting may be called by either of the supervisors of such towns, by giving at least three days' written notice to all the other members of such town boards of the time and place of such meeting.

§ 78. Right of action upon failure of towns whose boundaries are altered to agree upon disposition of assets and debts. Whenever said town boards shall fail to carry into effect the provisions of this article and agree upon the amount of assets to which each town is entitled, and the amount of indebtedness for which each town is liable and complete the full settlement thereof, within eighteen months after the division or alteration mentioned in section seventy-five of this article, any of such towns may begin and maintain an action against the other town or towns to make and enforce such settlement.

§ 79. Application of article. The provisions of this article shall apply to towns heretofore and hereafter divided or altered.

ARTICLE 5-A

DISSOLUTION OF CERTAIN TOWNS

Section 79-a. Dissolution of certain towns.

§ 79-a Dissolution of certain towns. 1. Any town having no bonded indebtedness may be dissolved and may be annexed to and become a part of an adjoining town in the same county, upon compliance with the following conditions:

a. The submission at a special or biennial town election in the town proposed to be dissolved of a proposition, in the manner provided by article six, for the dissolution of such town and the annexation of the territory therein to a specified adjoining town in the same county, and the approval of such proposition by a majority of the electors voting thereon at such election.

b. The submission at a special or biennial town election in such adjoining town, at the same time as the proposition provided for in the last preceding paragraph is submitted, of a proposition, in the manner provided by article six, for the annexation of the territory of the town

proposed to be dissolved, and the approval of such proposition by a majority of the duly qualified electors voting at such election.

2. If such proposition be so approved and adopted, the dissolution and annexation therein provided for shall become effective at the expiration of the thirty-first day of December of the odd numbered year next succeeding the year in which such propositions are so approved and adopted except in the county of Broome where such dissolution and annexation shall become effective at the expiration of the next succeeding even numbered year. Provided, however that such dissolution or annexation shall not affect a fire district or other special improvement district in the territory to be annexed. No election of town officers shall be held in the town so to be dissolved during the year immediately preceding the time such dissolution becomes effective but voters of such town shall have the right to vote at the election in such year for officers of the town to which such town is to be annexed and the board of elections shall make provision for the holding of such election in such town. The terms of office of all town officers of such town shall expire when such dissolution becomes effective, except justices of the peace who shall continue in office until the expiration of the term for which they were elected or appointed and who shall exercise all the powers and duties of and be entitled to compensation as a justice of the peace of the town to which such dissolved town is annexed, provided that they shall not be members of the town board of such town. No successors to such justices of the peace of the town so dissolved shall be elected or appointed.

3. All the property and assets, real and personal, of a town so dissolved, shall become the property and assets of the town to which it is annexed, and all debts and charges of a town so dissolved shall be the liability of and be paid by the town to which it is annexed. All funds and sums of money held by such a town so dissolved or any officer thereof to the credit of such town shall be paid to the supervisor of the town to which such dissolved town is annexed. All the books, records and documents of or on file with the town officers of a town so dissolved, shall be turned over at the expiration of their terms of office to appropriate officers of the town to which such territory is

annexed.

4. In case of dissolution and annexation as herein permitted, in the year at the end of which the dissolution and annexation become effective, the retiring supervisor of the town to be so dissolved shall present the assessment roll of such town, as completed by the assessors thereof, to the board of supervisors of the county and such board of supervisors shall cause each of the assessments thereon to be transferred and added to the assessment roll of the town to which such dissolved town is to be annexed, consolidated and treated as one tax roll and each of the pieces of property and all of the assessments so transferred shall thenceforth, for tax purposes, be part of the taxable property and assessments of the town to which such dissolved town is to be annexed.

5. In case of dissolution and annexation as herein permitted, the town board of the town to which the territory of the dissolved town is annexed shall make a proper revision of the election districts in such town.

ARTICLE 6 TOWN ELECTIONS

- Section 80. Biennial town elections.
- 81. Election upon proposition.
 - 82. Notice of submission of proposition; hours of voting.
 - 83. Conduct of town elections.
 - 84. Qualifications of electors at town elections.
 - 84-a. Absentee ballots for special town elections; special provisions.
 - 84-b. Early mail ballots for special town elections; special provisions.
 - 85. Ward system for election of council members.
 - 86. Town elections in the county of Broome.
 - 87. Increase or decrease of number of council members.
 - 88. Reduction of number of justices of the peace and election of town council members.

§ 80. Biennial town elections. Notwithstanding any provision of any general, special or local law, charter, code, ordinance, resolution, rule or regulation to the contrary, a biennial town election for the election of town officers, other than town justices or any town office with a three-year term prior to January first, two thousand twenty-five, and for the consideration of such questions as may be proposed by the town board or the duly qualified electors, pursuant to the provisions of this chapter, shall be held on the Tuesday next succeeding the first Monday in November of every even-numbered year. All other town elections are special elections. A town election or special town election held pursuant to this chapter, shall be construed as a substitute, for a town meeting or a special town meeting heretofore provided to be held by law, and a reference in any law to a town meeting or special town meeting shall be construed as referring to a town election or special town election. Any town completely coterminous with a village shall continue to elect its officers, including town justices, in odd-numbered years if both such village and town last held such elections in an odd-numbered year prior to January first, two thousand twenty-five.

§ 81. Election upon proposition. The town board may upon its own motion and shall upon a petition, as hereinafter provided, cause to be submitted at a special or biennial town election, a proposition:

1. In any town:

(a) To erect a monument or monuments within the town in commemoration of any person or event.

(b) To purchase, lease, construct, alter or remodel a town hall, a town lockup or any other necessary building for town purposes, acquire necessary lands therefor, and equip and furnish such buildings for such purposes, or to demolish or remove any town building.

(c) To establish airports, landing fields, public parking places, public parks or playgrounds, acquire the necessary lands therefor, and equip the same with suitable buildings, structures and apparatus.

(d) To vote upon or determine any question, proposition or resolution

which may lawfully be submitted, pursuant to this chapter or any general or special law.

(e) To dredge, bulkhead, dock and otherwise improve any navigable, or other waterway, within the town, and to rent, purchase and equip necessary machinery for such dredging, docking, bulkheading or other improvement, and supply the necessary labor and material therefor.

(f) To provide for the collection and disposition of garbage, ashes, rubbish and other waste matter in the town by (1) the award of one or more contracts for the collection and disposition of the same, (2) by the purchase, operation and maintenance of apparatus and equipment for the collection and transportation of the same, (3) by the construction, operation and maintenance of a disposal or incinerator plant or (4) by any combination of (1), (2) and (3).

2. In any town of the first class:

(a) To increase the number of council members from four to six.

(b) To establish or abolish the ward system for the election of council members in towns having four or six council members.

(c) To decrease the number of council members from four to two.

(d) To increase the number of council members from two to four.

3. In a town of the second class having five thousand or more population according to the latest federal or state census or enumeration or having an assessed valuation of ten million dollars or more, as shown by the latest completed assessment-roll of such town, or adjoining a city having a population of three hundred thousand or more, as shown by the latest federal or state census or enumeration, to change the classification of such town to that of a town of the first class.

4. Such petition shall be subscribed and authenticated, in the manner provided by the election law for the authentication of nominating petitions, by electors of the town qualified to vote upon a proposition to raise and expend money, in number equal to at least five per centum of the total votes cast for governor in said town at the last general election held for the election of state officers, but such number shall not be less than one hundred in a town of the first class nor less than twenty-five in a town of the second class. If such a petition be filed

in the office of the town clerk not less than sixty days, nor more than seventy-five days, prior to a biennial town election, the proposition shall be submitted at such biennial election. If a petition be presented at any other time, a special election shall be called to be held not less than sixty days, nor more than seventy-five days after the filing of such petition.

5. A proposition for the consolidation or dissolution of a town or district shall be noticed, conducted, canvassed and otherwise held pursuant to, and in accordance with, the provisions of article seventeen-A of the general municipal law; and a petition to consolidate or dissolve a town or district shall be subscribed, authenticated and otherwise governed pursuant to, and in accordance with, that article.

Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section.

Any expenditure financed in whole from moneys appropriated from surplus funds shall not be subject to referendum.

§ 82. Notice of submission of proposition; hours of voting. The town board shall adopt a resolution at least twenty days before every special town election designating the hours of opening and closing the polls and the place or places of holding the election, and setting forth in full all propositions to be voted upon. If the town board shall designate more than one voting place, the resolution and the notice hereinafter provided for shall specify the place at which the qualified voters of each election district shall vote. The polls shall remain open for at least six consecutive hours between eight o'clock in the forenoon and eight o'clock in the evening. The voting upon a proposition shall be by ballot and each proposition submitted shall be separately stated and numbered thereon. The town clerk shall give notice of such special town election at the expense of the town by the publication of a notice in a

newspaper published in said town, if there be any, or, if there be none, in a newspaper published in the county having general circulation in the town, specifying the time when and place or places where such election will be held, the hours during which the polls will remain open for the purpose of receiving ballots, and setting forth in full all propositions to be voted upon. The first publication of such notice shall be at least ten days prior to the time of such special election. In addition, the town clerk shall post or cause to be posted a copy of such notice on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter at least ten days prior to such election. In the event that any such questions or propositions shall be submitted at a biennial town election, notice that the same will be submitted setting them forth in full shall be published and posted in the manner above provided for special town elections.

§ 83. Conduct of town elections. The town board shall select from the list of election inspectors and ballot clerks previously designated for general election purposes, pursuant to the election law, persons to act as election inspectors and ballot clerks for each voting place at which a special town election shall be held. Election inspectors and ballot clerks for biennial town elections shall be those appointed as provided by the election law, and both special town elections and biennial elections shall be conducted, the votes canvassed, and the results certified and returned so far as practicable in the manner prescribed by such law. Upon the closing of the polls at any election at which a proposition or propositions shall be voted upon, the election inspectors shall proceed to canvass the votes thereat and shall complete such canvass without adjournment. As soon as possible after completion the inspectors shall file with the town clerk a certificate setting forth the holding of the election, the total number of votes cast upon each proposition, and the number of votes cast for and against each proposition, together with the name and address of every person voting at such election upon such proposition or propositions.

§ 84. Qualifications of electors at town elections. 1. No person shall

be entitled to vote upon any proposition for raising, appropriating or expending money or incurring any town liability, or for the sale or other disposition of town land or property, unless he or she is an elector of the town; nor shall he or she be entitled to vote upon any proposition for raising, appropriating or expending money or incurring any liability which shall be a charge wholly against a district or a portion of said town unless he or she is an elector.

2. The town board of a town may, by resolution adopted at a regular meeting, determine that thereafter personal registration of voters shall be required for special town elections. Such resolution and the notice hereinafter provided for shall specify the day or days, the place or places, and the hours during which a board or boards of registration shall meet for the purpose of preparing a register of voters of the town qualified to vote in such special elections, who shall present themselves personally for registration for such special election. The town clerk shall give notice at the expense of the town, by the publication of a notice in a newspaper published in said town, if there be any, or, if there be none, in a newspaper published in the county having general circulation in the town, specifying the day or days, the place or places, and hours during which the board or boards of registration will meet for the purpose of preparing a register of qualified voters of the town as provided in this section. The first publication of such notice shall be at least ten days prior to the first day fixed by the town board on which boards of registration shall meet. In addition, the town clerk shall post or cause to be posted in five conspicuous places in said town copies of such notice at least ten days prior to the first day fixed by the town board on which the boards of registration shall meet.

3. In such event, the town board shall select from the list of election inspectors previously designated for general election purposes, not less than two nor more than four persons to constitute a board of registration for each voting place designated by the town board, provided, however, a town board may, by resolution adopted at a regular meeting, determine that one or more boards of registration shall be reasonably capable of carrying out the personal registration

requirements, as provided in this section, for all voting places designated for such special town election. Each member of a board of registration shall be entitled to compensation at a rate to be fixed by the town board for time spent upon the duties of his office.

4. Such boards of registration shall meet on such days as the town board shall, by said resolution designate, the last day of which shall not be more than fifteen nor less than ten days preceding such special town election at the place in each election district where the election is to be held, and at such hours as the town board shall designate, which shall include at least four consecutive hours between twelve o'clock noon and nine o'clock in the evening of each day required for the preparation of the register for such election, which shall include, at a minimum, a space for the name of the voter and his address within the town, a space for the voter's signature to be signed on the day of the election and a space in which there shall be entered the qualifications for voters as provided by this section. All the provisions of the election law in relation to the registration of voters shall, so far as applicable, apply to the registration provided for by this section and such special elections in such towns shall be conducted in the manner provided by this chapter and the election law, except that no person shall be entitled to vote thereat whose name does not appear upon the register of the voting place in which he claims to be entitled to vote.

5. In order to assist boards of registration in the preparation of their registers, the town clerk, prior to the first meeting of such boards of registration, shall obtain from the board of elections of the county in which such town is located, the list of names and addresses of all voters registered with such board of elections on or before the twenty-third day before such special election. The town clerk shall deliver the names and addresses of qualified voters to the appropriate board or boards of registration on or before the first meeting of such board or boards. At the first and subsequent meetings of the board of registration for each voting place designated by the town board for such special town election, such board of registration shall place on the register described in subdivision four hereof the names of all qualified

voters and all other qualified voters who personally appear, those voters who have made application for early mail ballots, and those military voters and such other voters who are absent by reason of confining illness or physical disability or whose duties, occupation or business required them to be outside of the state of New York, having the qualifications of voters prescribed in this section and who have made application for absentee ballots as certified to them by the town clerk.

6. The register prepared as provided in this section shall immediately upon its completion and not more than eighteen hours thereafter; be filed in the office of the town clerk, and thereafter shall at all reasonable times be open to inspection by any qualified voter of the town on each day up to and including the day next preceding the day set for such town election, except Saturdays, Sundays and holidays.

Additions, corrections, challenges and judicial review of registration procedure shall so far as practicable conform to sections 5-218, 5-220 and 16-108 of the election law.

§ 84-a. Absentee ballots for special town elections; special provisions. 1. Absentee ballots shall be provided for all special town elections for which personal registration is required.

2. a. An applicant for such an absentee ballot shall submit an application setting forth (1) his name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that he is or will be, on the day of the election, a qualified voter of the town in which he resides; (3) that he is registered in the town; (4) that he will be unable to appear to vote in person on the day of the election for which the absentee ballot is requested because he is, or will be on such day (a) a patient in a hospital, or unable to appear personally at the polling place on such day because of illness or physical disability or (b) because his duties, occupation or business will require him to be outside of the county of his residence on such day, (c) because he will be on vacation outside the county of his

residence on such day; or, (d) absent from his voting residence because he is detained in jail awaiting action by a grand jury or awaiting trial or is confined in prison after conviction for an offense other than a felony. Such application must be received by the town clerk at least seven days before the election if the ballot is to be mailed to the voter, or the day before the election, if the ballot is to be delivered personally to the voter or his agent.

b. (1) Where such duties, occupation or business are of such a nature as ordinarily to require such absence, a brief description of such duties, occupation or business shall be set forth in such affidavit; and (2) where such duties, occupation or business are not of such a nature as ordinarily to require such absence, such application shall contain a statement of the special circumstances on account of which such absence is required.

c. Where the applicant expects in good faith to be absent on the day of the election because he will be on vacation elsewhere on such day, such application shall also contain the dates upon which he expects to begin and end such vacation, the place or places where he expects to be on such vacation, the name and address of his employer, if any, and if self-employed, a statement to that effect.

d. Where the absence is because of detention or confinement to jail, such affidavit shall state whether the voter is detained awaiting action of the grand jury or is confined after conviction for an offense other than a felony.

e. Where a person is or would be, if he were a qualified voter, entitled to apply for the right to vote by absentee ballot under the provisions of this section, his spouse, parent or child, if a qualified voter and a resident of the same town, shall be entitled to vote as an absentee voter upon personally making and signing an application in accordance with the preceding provisions of this subdivision and showing that he expects to be absent from the town on the day of the special town election by reason of accompanying or being with the spouse, child or parent who is or would be, if he were a qualified voter, so entitled

to apply for the right to vote by absentee ballot, and, in the event no application is made by such spouse, child or parent, such further information as the town shall require.

f. Such application shall include the following statement to be signed by the voter:

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for absentee ballots, I shall be guilty of a misdemeanor.

Date..... Signature of Voter.....

g. An applicant whose ability to appear personally at the polling place of the town of which he is a qualified voter is substantially impaired by reason of permanent illness or physical disability and whose registration record has been marked "permanently disabled" by the board of elections pursuant to the provisions of the election law shall be entitled to receive an absentee ballot pursuant to the provisions of this section without making separate application for such absentee ballot, and the town clerk, upon being advised by the board of elections on or with the list of registered voters that the registration record of a voter is marked "permanently disabled", shall send an absentee ballot to such voter at his last known address by first class mail with a request to the postal authorities not to forward same but to return same in five days in the event that it cannot be delivered to the addressee. The board of inspectors of the election district shall make an appropriate entry on the registration record indicating the fact that an absentee ballot has been sent and the date of mailing.

3. If, upon examining the application required under the provisions of subdivision two of this section, and upon such inquiry as it deems proper, the board of inspectors shall be satisfied that the applicant is a qualified voter of the town, and entitled to vote by absentee ballot, such board of inspectors shall place his name upon a list, thereupon the applicant shall be issued or mailed an absentee voter's ballot and the

town clerk shall make an appropriate entry on the list indicating that an absentee ballot has been applied for by, and issued to, the applicant.

4. Ballots for absentee voters shall be, as nearly as practicable, in the same form as those to be voted at the town election. On the back of such absentee ballots shall be printed the words "Official Ballot, Absentee Voter".

5. a. The board of registration shall enclose each absentee voter's ballot in an envelope which shall be labelled:

ELECTION MATERIAL
PLEASE EXPEDITE

On one side of such envelope shall be printed:

OFFICIAL BALLOT, ABSENTEE VOTER
for
Special Town Election

Name of Voter.....
Residence (street and number, if any).....
Town of.....
County of.....

The date of the election and name of the town shall be printed, and the name of the voter, residence and district shall be written in by the town clerk.

b. On the reverse side of such envelope shall be printed the following statement:

STATEMENT OF ABSENTEE VOTER

I do declare that I will have been a citizen of the United States for thirty days, and will be at least eighteen years of age, on the date of the special town election; that I will have been a resident of this state and of the town shown on the reverse side of this envelope for thirty days next preceding the said election; that I am or on such date will be, a registered voter of said town; that I will be unable to

appear personally on the day of said special town election at the polling place of the election district in which I am or will be a qualified voter because of the reason stated on my application heretofore submitted; that I have not qualified, or do I intend to vote, elsewhere than as set forth on the reverse side of this envelope; that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another to be paid or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this special town election, and have not made any promise to influence the giving or withholding of any such votes; that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this special town election; and that I have not been convicted of bribery or any infamous crime, or, if so convicted, that I have been pardoned or restored to all the rights of a citizen, without restriction as to the right of suffrage, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law removing my disability to register and vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of absentee voter, I shall be guilty of a misdemeanor.

Date..... Signature of Voter.....

c. The envelope shall be gummed, ready for sealing, and shall have printed thereon, on the side opposite the statement, instructions as to the duties of the voter after the marking of the ballot, which instructions shall include a specific direction stating that the envelope must reach the office of the town clerk not later than five P.M. on the day of the election in order that his vote may be canvassed.

d. A person who shall make any material false statement in the statement of absentee voter appearing on the reverse side of the envelope as provided in this subdivision, shall be guilty of a misdemeanor.

6. a. The town clerk shall make a list of all persons to whom absentee voter's ballots shall have been issued and keep such list on file in his office where it shall be available for public inspection during regular office hours until the day of the election. Any qualified voter may, upon examination of such list, file a written challenge of the qualifications as a voter of any person whose name appears on such list, stating the reasons for such challenge. A challenge to an absentee ballot may not be made on the basis that the voter should have applied for an early mail ballot. Such written challenge shall be transmitted by the town clerk to the inspectors of election on election day.

b. Such list shall also be posted in a conspicuous place or places during the election, and any qualified voter may challenge the acceptance of the absentee voter's ballot of any person on such list, by making his challenge and the reasons therefor known to the inspectors of election before the close of the polls.

7. a. The town clerk shall be authorized to call upon the commissioner of police and the officers and members of the police force for such assistance in the enforcement of the provisions of this section as he shall require, and such commissioner and officers and members of the police force shall be authorized to render such assistance.

b. The board of inspectors may require any person to attend before it at the office of the town clerk of the district and be examined as to any matter in relation to which such board is charged with a duty under this section, and may issue a subpoena therefor. Each member of such board of inspectors district shall be authorized to administer any oath that may be required or authorized by law in this connection.

8. No absentee voter's ballot shall be canvassed, unless it shall have been received in the office of the town clerk not later than five P.M. on the day of the election.

9. The town clerk shall, on the day of the election, transmit all absentee voters' envelopes, received by him in accordance with

subdivision eight of this section, to the inspectors of election.

10. If, at the election, any absentee voters' envelopes shall have been received at the polling place, the inspectors of election immediately after the closing of the polls shall examine them, and shall compare the signature, if any, on each envelope with the signature, if any, on the register, of the person of the same name who registered from the same address. If the signatures are found to correspond, the inspectors shall certify thereto by signing their initials opposite the name of the voter at the appropriate place in the register. If a person whose name is on an envelope as a voter, shall have already voted in person at such special town election, or if his name, residence and signature, as stated on the envelope, are not on the register, or if there is no signature on the envelope, this envelope shall be laid aside unopened and be returned unopened to the town clerk. If such person is found to be registered and has not so voted in person, and if no objection is made, or if an objection made be not sustained, the envelope shall be opened and the ballot withdrawn without unfolding and deposited in the proper box or boxes. At the time of the deposit of such ballot, the inspectors shall enter the words "absentee vote" at an appropriate place in the register.

11. During such examination any qualified voter present in the polling place may object to the voting of the ballot contained in any envelope upon the ground or grounds (a) that the person named thereon is not a qualified voter of the town, or (b) that he was within the county while the polls of the election were open, except where the applicant is a patient in a hospital located within the county or city or detained or confined in a jail located within the county and except where the ballot was obtained upon the ground of inability to appear personally at the polling place on the day of the special town election because of illness or physical disability, or (c) that he was able to appear personally while the polls were open, in cases where the ballot was obtained upon the ground that the voter was a patient in a hospital located within the county or detained or confined in a jail located within the county or upon the ground of inability to appear personally at the polling place on the day of the election because of illness or physical disability, or

(d) that he was not entitled to cast such ballot. An inspector shall make such an objection if he shall know or suspect that the person named on such envelope is not such a qualified voter or was so within the county or was able so to appear personally, or was not entitled to cast such ballot. The election inspectors shall forthwith proceed to determine each objection including any written challenge transmitted to them by the town clerk as provided in subdivision six of this section. Unless the inspectors, by majority vote, shall sustain the objection, the chairman, or if he refuses, another inspector shall endorse upon the envelope the objection and the words "not sustained," shall sign such endorsement, and shall open the envelope and deposit the ballot as provided in this section. Should the inspectors, by majority vote, sustain such objection, the objection and word "sustained" shall be similarly endorsed upon the envelope, the envelope shall not be opened nor the ballots therein canvassed, and such envelope shall be returned unopened to the town clerk. If the inspectors of election shall have received an envelope endorsed with the name of a person who to the knowledge of the inspectors is deceased on the day of the election, the inspectors shall return such envelope unopened to the town clerk with the words "deceased--objection sustained" endorsed on the envelope.

12. If the inspectors of election shall have received an envelope, and upon opening the same no ballot shall be found therein, the inspectors shall make a memorandum showing that the ballot is missing. When the casting of absentee voters' ballots shall have been completed, the inspectors shall ascertain the number of such ballots which have been deposited in the ballot box by deducting from the number of envelopes opened the number of missing ballots, and shall make a separate return thereof in duplicate. The number of absentee voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box in order to determine the number of all ballots to be accounted for in the ballot box. Such ballots shall then be counted or canvassed by the inspectors of election along with the other ballots cast at such district election, or, where voting machines are used, shall be added to the votes recorded on such machines.

13. The provisions of this section shall apply to absentee ballots in

special town elections, notwithstanding any other provision of law. The provisions of any other law as they relate to special town elections not inconsistent herewith shall apply to the conduct of such elections.

§ 84-b. Early mail ballots for special town elections; special provisions. 1. Early mail ballots shall be provided for all special town elections for which personal registration is required.

2. a. An applicant for such an early mail ballot shall submit an application setting forth (1) their name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that they are or will be, on the day of the election, a qualified voter of the town in which they reside; and (3) that they are registered in the town. Such application must be received by the town clerk at least seven days before the election if the ballot is to be mailed to the voter, or the day before the election, if the ballot is to be delivered personally to the voter or their agent.

b. Such application shall include the following statement to be signed by the voter:

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for early mail ballots, I shall be guilty of a misdemeanor.

Date Signature of Voter

3. If, upon examining the application required under the provisions of subdivision two of this section, and upon such inquiry as it deems proper, the board of inspectors shall be satisfied that the applicant is a qualified voter of the town, and entitled to vote by early mail ballot, such board of inspectors shall place their name upon a list, thereupon the applicant shall be issued or mailed an early mail ballot and the town clerk shall make an appropriate entry on the list indicating that an early mail ballot has been applied for by, and issued to, the applicant.

4. Ballots for early mail voters shall be, as nearly as practicable, in the same form as those to be voted at the town election. On the back of such early mail ballots shall be printed the words "Official Ballot, Early Mail Voter".

5. a. The board of registration shall enclose each early mail voter's ballot in an envelope which shall be labelled:

ELECTION MATERIAL

PLEASE EXPEDITE

On one side of such envelope shall be printed:

OFFICIAL BALLOT, EARLY MAIL VOTER

for

Special Town Election

Name of Voter

Residence (street and number, if any)

Town of

County of

The date of the election and name of the town shall be printed, and the name of the voter, residence and district shall be written in by the town clerk.

b. On the reverse side of such envelope shall be printed the following statement:

STATEMENT OF EARLY MAIL VOTER

I do declare that I will have been a citizen of the United States for thirty days, and will be at least eighteen years of age, on the date of the special town election; that I will have been a resident of this state and of the town shown on the reverse side of this envelope for thirty days next preceding the said election; that I am or on such date will be, a registered voter of said town; that I have not qualified, or do I intend to vote, elsewhere than as set forth on the reverse side of this envelope; that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another to be paid or used, any money or

other valuable thing, as a compensation or reward for the giving or withholding of a vote at this special town election, and have not made any promise to influence the giving or withholding of any such votes; that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this special town election; and that I have not been convicted of bribery or any infamous crime, or, if so convicted, that I have been pardoned or restored to all the rights of a citizen, without restriction as to the right of suffrage, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law removing my disability to register and vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of early mail voter, I shall be guilty of a misdemeanor.

Date.... Signature of Voter....

c. The envelope shall be gummed, ready for sealing, and shall have printed thereon, on the side opposite the statement, instructions as to the duties of the voter after the marking of the ballot, which instructions shall include a specific direction stating that the envelope must reach the office of the town clerk not later than five P.M. on the day of the election in order that their vote may be canvassed.

d. A person who shall make any material false statement in the statement of early mail voter appearing on the reverse side of the envelope as provided in this subdivision, shall be guilty of a misdemeanor.

6. a. The town clerk shall make a list of all persons to whom early mail voter's ballots shall have been issued and keep such list on file in their office where it shall be available for public inspection during regular office hours until the day of the election. Any qualified voter may, upon examination of such list, file a written challenge of the

qualifications as a voter of any person whose name appears on such list, stating the reasons for such challenge. A challenge to an early mail ballot may not be made on the basis that the voter should have applied for an absentee ballot. Such written challenge shall be transmitted by the town clerk to the inspectors of election on election day.

b. Such list shall also be posted in a conspicuous place or places during the election, and any qualified voter may challenge the acceptance of the early mail voter's ballot of any person on such list, by making their challenge and the reasons therefor known to the inspectors of election before the close of the polls.

7. a. The town clerk shall be authorized to call upon the commissioner of police and the officers and members of the police force for such assistance in the enforcement of the provisions of this section as he shall require, and such commissioner and officers and members of the police force shall be authorized to render such assistance.

b. The board of inspectors may require any person to attend before it at the office of the town clerk of the district and be examined as to any matter in relation to which such board is charged with a duty under this section, and may issue a subpoena therefor. Each member of such board of inspectors district shall be authorized to administer any oath that may be required or authorized by law in this connection.

8. No early mail voter's ballot shall be canvassed, unless it shall have been received in the office of the town clerk not later than five P.M. on the day of the election.

9. The town clerk shall, on the day of the election, transmit all early mail voters' envelopes, received by him in accordance with subdivision eight of this section, to the inspectors of election.

10. If, at the election, any early mail voters' envelopes shall have been received at the polling place, the inspectors of election immediately after the closing of the polls shall examine them, and shall compare the signature, if any, on each envelope with the signature, if

any, on the register, of the person of the same name who registered from the same address. If the signatures are found to correspond, the inspectors shall certify thereto by signing their initials opposite the name of the voter at the appropriate place in the register. If a person whose name is on an envelope as a voter, shall have already voted in person at such special town election, or if their name, residence and signature, as stated on the envelope, are not on the register, or if there is no signature on the envelope, this envelope shall be laid aside unopened and be returned unopened to the town clerk. If such person is found to be registered and has not so voted in person, and if no objection is made, or if an objection made be not sustained, the envelope shall be opened and the ballot withdrawn without unfolding and deposited in the proper box or boxes. At the time of the deposit of such ballot, the inspectors shall enter the words "early mail vote" at an appropriate place in the register.

11. During such examination any qualified voter present in the polling place may object to the voting of the ballot contained in any envelope upon the ground or grounds that the person named thereon is not a qualified voter of the town. An inspector shall make such an objection if he shall know or suspect that the person named on such envelope is not such a qualified voter. The election inspectors shall forthwith proceed to determine each objection including any written challenge transmitted to them by the town clerk as provided in subdivision six of this section. Unless the inspectors, by majority vote, shall sustain the objection, the chairman, or if he refuses, another inspector shall endorse upon the envelope the objection and the words "not sustained," shall sign such endorsement, and shall open the envelope and deposit the ballot as provided in this section. Should the inspectors, by majority vote, sustain such objection, the objection and word "sustained" shall be similarly endorsed upon the envelope, the envelope shall not be opened nor the ballots therein canvassed, and such envelope shall be returned unopened to the town clerk. If the inspectors of election shall have received an envelope endorsed with the name of a person who to the knowledge of the inspectors is deceased on the day of the election, the inspectors shall return such envelope unopened to the town clerk with the words "deceased--objection sustained" endorsed on the envelope.

12. If the inspectors of election shall have received an envelope, and upon opening the same no ballot shall be found therein, the inspectors shall make a memorandum showing that the ballot is missing. When the casting of early mail voters' ballots shall have been completed, the inspectors shall ascertain the number of such ballots which have been deposited in the ballot box by deducting from the number of envelopes opened the number of missing ballots, and shall make a separate return thereof in duplicate. The number of early mail voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box in order to determine the number of all ballots to be accounted for in the ballot box. Such ballots shall then be counted or canvassed by the inspectors of election along with the other ballots cast at such district election, or, where voting machines are used, shall be added to the votes recorded on such machines.

13. The provisions of this section shall apply to early mail ballots in special town elections, notwithstanding any other provision of law. The provisions of any other law as they relate to special town elections not inconsistent herewith shall apply to the conduct of such elections.

§ 85. Ward system for election of council members. 1. Whenever a proposition shall have been adopted in a town of the first class for the establishment of the ward system and the election thereafter of one council member from each ward, the board of elections of the county in which such town is situate shall divide the town into four wards and fix the boundaries thereof, unless a proposition shall have been adopted to increase the number of council members from four to six, in which instance, the board of elections shall divide the town into six wards and fix the boundaries thereof. In so dividing the town into wards, no town election district shall be divided and no election district thereafter created under the election law shall contain parts of two or more wards. So far as possible the division shall be so made that the number of voters in each ward shall be approximately equal. When the board of elections shall have finally determined the boundaries of the wards, they shall cause a map of the town to be prepared showing in

detail the location of each ward and the boundaries thereof. The original map so made shall be filed in the office of the town clerk and copies thereof shall be filed in the offices of the county clerk and the board of elections of the county. The ward system shall be deemed established after such filing is complete. After a ward system shall have been so established, the term of office of every town council member shall terminate on the thirty-first day of December next succeeding the first biennial town election held not less than one hundred twenty days after the establishment of such ward system, and at such biennial town election, and every biennial town election thereafter, one resident elector of each ward shall be elected as council member therefrom for a term of two years beginning on the first day of January next succeeding such election.

2. The ward system may be abolished upon the adoption of a proposition therefor at any special or biennial town election. At the first biennial town election held at least one hundred twenty days after the adoption of a proposition to abolish the ward system for election of council members, the electors of the town shall elect one-half of the total number of town council members for the term of two years each and one-half of the total number of town council members for the term of four years each. At each biennial town election held thereafter there shall be elected one-half of the total number of town council members for the term of four years each. The terms of all such council members shall begin on the first day of January next succeeding the date of their election.

§ 86. Town elections in the county of Broome. Biennial town elections in the several towns of the county of Broome, for the election of town officers and for the consideration of such questions as may be proposed by the town board or the duly qualified electors, pursuant to the provisions of this chapter, shall be held on the Tuesday next succeeding the first Monday in November of every even-numbered year. All other town elections in towns of such county are special elections. All elective town officers of the several towns in the county in office at the time this section takes effect, shall continue in office for the

terms for which elected and until their successors have been elected and have qualified. The town officers to be elected at any such election shall be those and only those elective town officers of a town of the second class, unless such town shall have determined to become a town of the first class, pursuant to the provisions of this chapter, and shall be elected for terms prescribed by this chapter.

§ 87. Increase or decrease of number of council members. 1. Whenever a proposition shall have been adopted in a town of the first class which shall not have established the ward system, to increase the number of council members from four to six, party nominations for town council members may be made and designating petitions filed and four town council members shall be elected at the first biennial town election held at least one hundred fifty days thereafter, three for a term of four years each and one for a term of two years and thereafter at each biennial town election in such town there shall be elected three town council members for the term of four years each, in the same manner as other elective town officers in such town. The term of office of each such council member shall begin on the first day of January next succeeding the election at which they were elected.

2. Whenever a proposition shall have been adopted in a town of the first class which shall not have established the ward system, to increase the number of council members from two to four, party nominations for town council members may be made and designating petitions filed and three town council members shall be elected at the first biennial town election held at least one hundred fifty days thereafter, two for terms of four years each and one for a term of two years, and thereafter at each biennial town election in such town, there shall be elected two town council members for terms of four years each, in the same manner as other elective town officers in such town. The term of office of each such town council member shall begin on the first day of January next succeeding the election at which they were elected.

3. Whenever a proposition shall have been adopted in a town of the first class to reduce the number of council members from four to two, no

town council members shall be elected at the first biennial town election held at least one hundred fifty days after the adoption of such proposition. Party nominations for town council members may be made and designating petitions filed and two town council members shall be elected at the biennial town election next succeeding the biennial town election at which no town council members are elected, one for a term of two years and one for a term of four years and thereafter at each biennial town election in such town there shall be elected one town council member for a term of four years, in the same manner as other elective town officers in such town. The term of office of each such council member shall begin on the first day of January next succeeding the election at which they were elected.

§ 88. Reduction of number of justices of the peace and election of town council members. 1. Except in the town of Hector in the county of Schuyler, and except as hereinafter provided, in any town of the second class having more than two justices of the peace there shall be elected at the next biennial town election occurring after this act shall take effect and at every biennial town election held in such town thereafter, one justice of the peace and one town council member for a term of four years each to begin on the first day of January next succeeding the election at which such officers were elected. During the period between the first day of January next succeeding the biennial town election at which the first town council member shall be so elected and the first day of January next succeeding the biennial town election at which a second town council member shall be elected, the supervisor, the justices of the peace and the town council member of such town shall constitute the town board thereof. On and after the first day of January next succeeding the biennial town election at which the second town council member shall be elected, the supervisor, the two justices of the peace and the two town council members shall constitute such town board. Nothing herein contained shall be construed to abridge the term of a justice of the peace heretofore elected in any town.

2. Notwithstanding the provisions of subdivision one of this section, the town board of any town of the second class to which this section

shall apply may, by resolution, direct that at the first biennial town election held after this act shall take effect, there shall be elected two town council members (but no justices of the peace except to fill a vacancy) for a term of four years each to begin on the first day of January next succeeding the election at which such officers were elected, instead of one justice of the peace and one town council member; and on and after the first day of January next succeeding the biennial town election at which such town council members shall be so elected the supervisor, the justices of the peace and the two town council members of such town shall constitute the town board thereof. At each biennial election at which no town council members are elected (except to fill a vacancy) two justices of the peace shall be elected for a term of four years each beginning on the first day of January next succeeding such election.

3. Notwithstanding the provisions of subdivision one of this section, the town board of any town of the second class to which this section shall apply may, by resolution, direct that at the first biennial town election held after this act shall take effect, there shall be elected two justices of the peace for a term of four years each to begin on the first day of January next succeeding the election at which such officers were elected, instead of one justice of the peace and one town council member; and on and after the first day of January next succeeding the biennial town election at which such justices of the peace shall be so elected the supervisor and the justices of the peace shall constitute the town board thereof. At the next biennial election thereafter, two town council members shall be elected for a term of four years each, in place of the two justices of the peace whose terms shall next expire, and the town board shall thereafter consist of the supervisor, two justices of the peace and two town council members.

4. The provisions of this section, however, shall not apply to the town of Islip in the county of Suffolk and, in such town, four justices of the peace shall continue to be elected in accordance with former provisions of law and the supervisor and the four justices of the peace shall continue to constitute the town board of such town.

ARTICLE 7

PERMISSIVE REFERENDUM

Section 90. Acts or resolutions of the town board that are subject to a referendum on petition.

91. Referendum on petition.

92. Propositions for the submission of acts or resolutions.

93. Repeal of acts or resolutions of town board.

94. Referendum on acts or resolutions of the town board without petition.

§ 90. Acts or resolutions of the town board that are subject to a referendum on petition. Whenever this chapter shall expressly provide that an act or resolution of the town board is subject to a permissive referendum, such act or resolution shall be subject to a referendum on petition as set forth in the next section, unless a proposition therefor shall have been adopted at a town election. Within ten days after the adoption by the town board of any resolution which is subject to a permissive referendum as above defined, the town clerk, in the same manner as provided for notice of a special election, shall post and publish a notice which shall set forth the date of the adoption of the resolution and contain an abstract of such act or resolution concisely stating the purpose and effect thereof. The notice shall specify that such resolution was adopted subject to a permissive referendum.

§ 91. Referendum on petition. Any such resolution or act of the town board as set forth in the preceding section shall not take effect until thirty days after its adoption; nor until approved by the affirmative vote of a majority of the qualified electors of such town or district affected, voting on such proposition, if within thirty days after its adoption there be filed with the town clerk a petition signed, and acknowledged or proved, or authenticated by electors of the town qualified to vote upon a proposition to raise and expend money, in number equal to at least five per centum of the total vote cast for governor in said town at the last general election held for the election

of state officers, but which shall not be less than one hundred in a town of the first class nor less than twenty-five in a town of the second class, protesting against such act or resolution and requesting that it be submitted to the qualified electors of the town or district affected, for their approval or disapproval. If such petition be so filed not more than one hundred five days nor less than ninety days prior to a biennial town election, a proposition for the approval of such act or resolution shall be submitted at such biennial town election. If a petition be so filed at any other time, a proposition for the approval of such act or resolution shall be submitted at a special town election to be held not less than ninety nor more than one hundred five days after the filing of such petition. The petition may be made upon separate sheets and the signatures to each sheet shall be authenticated in the manner provided by the election law for the authentication of nominating petitions. The several sheets so signed and authenticated when fastened together and offered for filing shall be deemed to constitute one petition. If, within five days after the filing of such petition, a written objection thereto be filed with the town clerk, and a verified petition setting forth the objections be presented by the person so filing such objections to the supreme court or any justice thereof of the judicial district in which such town is located, such court or justice within twenty days shall determine any question arising thereunder and make such order as justice may require. Such proceeding shall be heard and determined in the manner prescribed by section 16-116 of the election law.

§ 92. Propositions for the submission of acts or resolutions. A proposition for the submission of any such act or resolution of the town board to the approval of the qualified electors pursuant to this chapter, shall contain an abstract of such act or resolution concisely stating the purpose and effect thereof. The town clerk shall prepare such abstract with the advice of the town attorney, if there be one, and forthwith transmit the proposition to the town board in the form in which it is to be submitted at such annual or special election in accord with the provisions of this chapter. If there be more than one such proposition to be voted upon at such election, each proposition shall be

separately and consecutively numbered. Each proposition for raising, appropriating or expending money or incurring any liability which shall be a charge wholly against a district or a portion of the town shall be submitted upon a separate ballot.

§ 93. Repeal of acts or resolutions of town board. Any act or resolution of a town board may be rescinded or repealed at any time by the town board and, in case the resolution so repealed be one subject to a permissive referendum and a petition thereupon be filed, no further proceedings shall be had thereunder and no referendum shall be held.

§ 94. Referendum on acts or resolutions of the town board without petition. The town board, upon its own motion, may cause to be submitted for the approval of the electors any act or resolution of such board against which a petition could be filed as provided in this chapter and the proceedings thereon shall be the same as if such petition had been filed in accord with the provisions of this chapter.

ARTICLE 8

FINANCES

- Section 100. Application.
101. Fiscal year.
102. Budget system.
103. Definitions.
104. Submission of estimates.
105. Fire district estimates and budget.
106. Preparation, filing and review of tentative and preliminary budgets.
107. Contents of preliminary budget.
108. Public hearing.
109. Final revision and adoption of budget.
110. Encumbering appropriations.
111. Lapse of appropriations.
112. Supplemental appropriations; unappropriated unreserved

fund balances.

- 113. Transfers from general purpose funds to other funds.
- 114. Interest charges against districts.
- 115. Tax levy.
- 116. Town charges.
- 117. Certain contracts and expenditures prohibited.
- 118. Form of claims.
- 119. Audit of claims and issuance of warrants.
- 120. Payrolls to be certified.
- 121. Payment of judgments and compromised actions, proceedings or claims.
- 122. Advertising for bids; letting of contracts.
- 122-a. Purchasing of products for public use.
- 123. Annual accounting by town officers and employees.
- 124. Designation of the comptroller as accounting officer.
- 125. Duties of supervisor.

§ 100. Application. This article shall apply to all towns.

§ 101. Fiscal year. The fiscal year of all towns shall begin on the first day of January and end on the thirty-first day of December in each year.

§ 102. Budget system. The provisions of section one hundred two to section one hundred fifteen, inclusive, shall be known as the budget system.

§ 103. Definitions. For the purpose of this article, the following terms shall be defined as follows:

- 1. "Administrative unit" shall mean an office, department, division, bureau, board, commission, district, or other agency of town government, but shall exclude a fire district.

2. "Budget officer" shall mean the supervisor or, in towns which have more than one supervisor, the presiding supervisor; provided that the supervisor or presiding supervisor may appoint, to serve at his pleasure, any person including a town officer or employee, other than a member of the town board, to be budget officer. When a person other than the supervisor has been appointed as budget officer, the supervisor, in the event of a vacancy in the office of budget officer shall serve as budget officer unless and until another person shall be appointed as provided in this subdivision.

3. "Capital project" shall mean: (a) any physical public betterment or improvement or studies, surveys and plans relative thereto, or (b) land or rights in land, or (c) any furnishings, machinery, apparatus or equipment for any physical public betterment or improvement when such betterment or improvement is first constructed or acquired, or (d) any combination of items (a), (b) and (c).

4. "Unappropriated unreserved fund balance" shall mean the difference between the total assets for a fund and the total liabilities, deferred revenues, encumbered appropriations, amounts appropriated for the ensuing fiscal year's budget, and amounts reserved for stated purposes pursuant to law, including reserve funds established pursuant to the general municipal law for the fund, as determined through application of the system of accounts prescribed by the state comptroller pursuant to section thirty-six of the general municipal law.

§ 104. Submission of estimates. 1. The head of each administrative unit, except as otherwise provided in section two hundred two-a of this chapter, shall submit on or before the twentieth day of September to the budget officer an estimate of revenues and expenditures of such administrative unit for the ensuing year. In towns in Westchester and Monroe counties such estimates shall be submitted on or before the twentieth day of October. Estimates shall be submitted in such form and shall contain such information as the budget officer shall prescribe.

2. If the head of an administrative unit shall fail to submit an estimate by the designated date, the budget officer shall forthwith prepare the estimate for such administrative unit.

§ 105. Fire district estimates and budget. 1. The board of commissioners of each fire district shall submit the fire district budget on or before the seventh day of November to the budget officer. The fire district budget shall be in the form prescribed by and pursuant to subdivision one of section one hundred seven of this article, and shall be adopted in the manner prescribed in section one hundred eighty-one of this chapter.

2. The budget officer shall affix the fire district budget to the annual town budget, established pursuant to section one hundred nine of this article, as a part thereof. No change shall be made by the budget officer or the town board in the budget submitted by a fire district.

§ 106. Preparation, filing and review of tentative and preliminary budgets. 1. The budget officer, upon receipt of the estimates of the various administrative units, shall review the estimates and may confer with the head of any such unit in regard to such estimates. He may require the head of any such unit to furnish information and to answer inquiries pertinent to such review.

2. Upon the completion of the review of the estimates, the budget officer shall prepare a tentative budget which shall include his recommendations and which shall be in the form prescribed in and in conformance with section one hundred seven of this article. He may also prepare a budget message explaining the main features of the tentative budget and containing such additional information as he may deem advisable. On or before the thirtieth day of September, or in towns in Westchester and Monroe counties on or before the thirtieth day of October, he shall file in the office of the town clerk the tentative budget, the budget message, if any, and the estimates and schedules.

3. The town clerk shall present the tentative budget to the town board at a regular or special meeting to be held on or before the fifth day of October. In towns in Westchester and Monroe counties the town clerk shall present the tentative budget to the town board at a regular or special meeting to be held on or before the tenth day of November. The town board may call upon the head of any administrative unit and the budget officer to discuss the tentative budget and the estimates as originally submitted. The head of any administrative unit may request in writing that he be permitted to explain his estimates to the town board. The town board shall review the tentative budget and may make such changes, alterations and revisions as it shall consider advisable and which are consistent with law.

4. Upon the completion of such review, the tentative budget and any modifications thereof as approved by the town board, shall become the preliminary budget. The preliminary budget shall be filed in the office of the town clerk and the town clerk shall reproduce for public distribution as many copies as the town board may direct.

§ 107. Contents of preliminary budget. 1. The preliminary budget shall be in the format prescribed by the state comptroller. The preliminary budget shall show by funds (a) proposed appropriations and estimated revenues in accordance with the classification of accounts prescribed by the state comptroller pursuant to article three of the general municipal law, (b) estimated fund balances, together with a breakdown of such fund balance estimated for encumbrances, amounts appropriated for the ensuing fiscal year's budget, amounts reserved for stated purposes pursuant to law, including reserve funds established pursuant to the general municipal law, and the remaining estimated unappropriated unreserved fund balance for each fund, provided that the remaining estimated unappropriated unreserved fund balance for each fund shall not exceed a reasonable amount, consistent with prudent budgeting practices, necessary to ensure the orderly operation of town government, taking into account factors including, but not limited to, the size of the fund, cash flows, the certainty with which the amounts of revenues and expenditures can be estimated, and the town's experience in prior

fiscal years, (c) the amount of taxes to be levied, (d) salaries of elected officers, and (e) such other information pertinent to the above as shall be prescribed by the state comptroller.

2. Such budget may contain for general contingent purposes, an amount not to exceed ten per centum of the total amount estimated as necessary to provide for the operation of town government exclusive of the amount necessary to pay debt service and judgments, estimates for special district purposes, estimates for the repair and improvement of highways and estimates for purposes for which real property taxes are required to be levied on an area less than the entire town. A sum also be included for special contingent purposes, which amount shall not exceed ten per centum of the total amount estimated as necessary to provide for the operation of town government and for which real property taxes are required to be levied on the area of the town outside villages, exclusive of the amount required to pay debt service, judgments and estimates for special district purposes and for the repair and improvement of highways.

3. Amounts to be raised by tax for highway purposes shall be within the limitations of section two hundred seventy-one of the highway law.

4. The preliminary budget shall include any other data which the town board may, by resolution, require.

§ 108. Public hearing. The town board shall hold a public hearing on the preliminary budget showing such changes, alterations and revisions as shall have been made therein by such board pursuant to subdivision three of section one hundred six of this chapter. Such hearing shall be held on or before the Thursday immediately following the general election, except that in towns in Westchester and Monroe counties such hearing shall be held on or before the tenth day of December. Notice of such public hearing shall be published at least once in the official newspaper, or if no official newspaper has been designated, in any newspaper having general circulation in the town. The notice may be published in such other newspapers and for such other additional times

as the town board, by resolution, shall direct. At least five days shall elapse between the date of the first publication of the notice and the date specified for the hearing. The notice of hearing shall state the time when and the place where the public hearing will be held, the purpose thereof and that a copy of the preliminary budget is available at the office of the town clerk where it may be inspected by any interested person during office hours. Such notice shall also specify the proposed salaries of each member of the town board, an elected town clerk and an elected town superintendent of highways. The town clerk shall cause a copy of the notice to be posted on the signboard of the town, maintained pursuant to subdivision six of section thirty of this chapter, not later than five days before the day designated for such hearing. The hearing may be adjourned from day to day but not beyond the fifteenth day of November, except that in towns in Westchester and Monroe counties the hearing may be so adjourned up to and including the fifteenth day of December. At such hearing, any person may be heard in favor of or against the preliminary budget as compiled or for or against any item or items therein contained.

§ 109. Final revision and adoption of budget. 1. After the public hearing, the town board may further change, alter and revise the preliminary budget, subject, however, to the requirements of subdivision one of section one hundred seven of this chapter.

2. The preliminary budget as submitted or amended shall be finally adopted by resolution of the town board not later than the twentieth day of November, except that in towns in Westchester and Monroe counties not later than the twentieth day of December. The preliminary budget as adopted shall be known as the annual budget for the town for the fiscal year beginning on the first day of January next succeeding, and it shall be entered in the minutes of the town board.

3. Upon the adoption of the resolution required by this section the amounts proposed to be appropriated shall thereupon be appropriated. In the event that the town board shall fail to adopt a budget as of the twentieth day of November, or in towns in Westchester and Monroe

counties as of the twentieth day of December, the preliminary budget, with such changes, alterations and revisions, if any, as shall have been made by the town board, shall constitute the budget for the ensuing fiscal year.

§ 110. Encumbering appropriations. The head of each administrative unit shall file a list of unpaid obligations with the supervisor at the close of the fiscal year. The supervisor shall encumber the applicable appropriation account balances to the extent of such unpaid obligations. The town board may provide for the encumbering of appropriation accounts at more frequent intervals.

§ 111. Lapse of appropriations. Each appropriation to the extent that it shall not have been expended or obligated, shall lapse at the close of the fiscal year for which made, except that an appropriation for a capital project shall continue in force until the purposes for which it was made shall have been accomplished or abandoned.

§ 112. Supplemental appropriations; unappropriated unreserved fund balances. 1. The town board, during a fiscal year, by resolution, may make additional appropriations or increase existing appropriations and shall provide for the financing thereof. Moneys therefor may be provided from the unexpended balance of an appropriation, from the appropriation for contingencies, from unappropriated unreserved fund balance or unanticipated revenues within a fund or by borrowing pursuant to the local finance law. For the purposes of this subdivision, unappropriated unreserved fund balance or unanticipated revenues shall be utilized only to the extent that the total of all revenues of such fund recognized or reasonably expected to be recognized in the current fiscal year, together with unappropriated unreserved fund balance, exceeds the total of all revenues and appropriated fund balance as estimated in the budget.

2. If at any time during a fiscal year a town receives moneys from any

source, except from loans, which are not otherwise committed or appropriated, the town board may direct the supervisor to pay the same or any part thereof to the treasurer of the county to be applied in reduction of the amount to be levied for state and county purposes, and the supervisor shall pay such moneys to the county treasurer prior to the levy.

3. Notwithstanding the provisions of subdivision one of this section, grants in aid from the state and federal governments, gifts which are required to be expended for particular objects or purposes, and insurance proceeds for the loss, theft, damage or destruction of real or personal property, when proposed to be used or applied to repair or replace such property, may be appropriated by resolution of the town board at any time for such objects and purposes.

§ 113. Transfers from general purpose funds to other funds.

Notwithstanding any other provision of law, the town board may, by resolution, authorize the transfer of surplus moneys, contingent appropriations, and unexpended balances

(1) from the fund maintained for general town purposes and comprised of moneys which, if raised by taxes, would be raised by taxes levied on property in the entire area of the town, to any of the funds or accounts authorized by section one hundred forty-one of the highway law and comprised of moneys which, if raised by taxes, would be raised by taxes levied on property in the entire area of the town; and,

(2) from the fund maintained for general town purposes and comprised of moneys which, if raised by taxes, would be raised by taxes levied solely on property in the area of the town outside of villages, to any of the funds or accounts authorized by section one hundred forty-one of the highway law which are comprised of moneys which, if raised by taxes, would be raised by taxes levied solely on property in such area.

§ 114. Interest charges against districts. The town board may include in the annual budget a charge against any district for the amount of any interest paid or to be paid upon moneys borrowed for district purposes

in anticipation of the receipt of taxes, assessments and revenues of any such district.

§ 115. Tax levy. The town clerk shall prepare and certify in duplicate a copy of the annual budget as adopted by the town board, together with the estimates, if any, adopted pursuant to section two hundred two-a of this chapter. The town clerk shall then affix to each such copy of the annual budget adopted by the town board, as part thereof, a copy of the annual budget of each fire district located in whole or in part within the town as certified by the secretary of the fire district. Within five days thereof the town clerk shall deliver two copies of such budget to the supervisor of the town. The supervisor shall present the copies of the annual budget to the board of supervisors of the county in which such town is situated within ten days after his receipt thereof from the clerk as hereinabove provided. The board of supervisors shall levy and cause to be raised the amounts specified in said annual budget to be levied by tax or assessments, and such amounts shall be levied, assessed and raised by tax and assessments upon the real property of the town liable therefor, at the time and in the manner provided by law for the levy of state and county taxes. The clerk of the board of supervisors shall cause such annual budget to be printed in the journal or proceedings of the board of supervisors except that the board of supervisors of any county by majority vote may authorize the clerk to cause a summary, recapitulation or abstract of such budget to be so printed.

§ 116. Town charges. Except as herein otherwise provided, towns may incur obligations for any purpose necessary to give effect to the powers herein granted, including but not limited to the following:

1. The compensation of town officers and employees, and all expenses necessarily incurred for the use and benefit of the town, and when incurred by authority of the town board, all expenses necessarily incurred and paid by any town officer or employee in executing the duties of his office or position, including actual and necessary

expenses for travel, office rent, janitor service, light, heat, telephone, postage, furniture, books, stationery and supplies, and, in the county of Franklin, for maintenance while attending meetings of the town board. The town board of any town, in lieu of auditing and allowing the claim of a town officer or employee for actual and necessary expenses for travel, may determine by resolution to allow and pay such officer or employee a reasonable mileage allowance for the use of his own automobile for each mile actually and necessarily traveled by him in the performance of the duties of his office or position, in attending a course of training for his respective office or position provided by the town and county officers training school of the state of New York, or in attending a convention, conference or school pursuant to section seventy-seven-b of the general municipal law.

2. All damages recovered against a town officer for any act done pursuant to a resolution, or proposition, duly adopted by the town board or at a town election duly held; and all damages against any such officer for any act done in good faith, in his official capacity, without any such direction or resolution, may be made a town charge, by a vote of the town, at a town election duly held, or by a resolution of the town board, but any such subsequent resolution of the town board shall be subject to a permissive referendum.

3. The moneys authorized to be raised by the vote of a town election for any town purpose, or by resolution of the town board, which has become effective by the failure to file a petition for a referendum, or, which has been approved by a referendum.

4. The actual expenses necessarily incurred by the supervisor of a town in the forest preserve, when authorized by resolution of the town board, in connection with the distribution of fish and game birds, not exceeding one hundred dollars in any one year.

5-a. The expense incurred by a town officer, with the approval of the town board, for insurance indemnifying against any loss through theft, robbery or burglary of public moneys in his custody.

6. The cost and expense necessarily incurred by the town board in the employment of a veterinarian to examine animals in the town to ascertain whether they are infected with an infectious or communicable disease. The town board may employ such veterinarian and provide for filing the result of examinations made by him with the commissioner of agriculture and markets.

7. The reasonable fees of a physician for examining a person arrested in the town and charged with being intoxicated while operating a motor vehicle.

8. The engaging of a certified public accountant or a public accountant to audit the accounts and fiscal affairs of the town.

9. The fees of officers other than magistrates in criminal proceedings, or in criminal actions tried before a magistrate of the town where the offense is alleged to have been committed. The fees allowable to towns and villages for the services of a magistrate and the fees allowable to an officer in issuing or serving process for an offense committed in a town other than that in which such magistrate resides, and of which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine and the fees allowable to towns and villages for the services of a magistrate in the trial or examination of a person brought before him by reason of the absence or inability to act of the magistrate before whom he is directed by the warrant to be brought, charged with such an offense committed in a town other than that in which the magistrate before whom such person is brought resides, shall, in either case, be a charge against the town in which such offense was committed. Except as provided in this section no fees shall be allowed to an officer, for services in a criminal action or proceeding, before a magistrate of one town for or on account of an offense charged to have been committed in another town, and which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine. The fees and mileage of a police officer or peace officer in connection with any criminal action or proceeding of which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear

and determine, may be fixed by the town board of the town to which the same are chargeable, not exceeding the amount now allowed by law; and when so fixed, shall supersede as to such town any other provision of law fixing fees or mileage in such case. The fees allowable to towns for the services of magistrates and the fees allowable to other officers for services in criminal proceedings, for or on account of an offense which a court of special sessions has not jurisdiction to try, shall be a county charge, if the magistrate had jurisdiction of the proceedings in which the services were rendered. A county shall pay any amount due to a town for the services of a justice of the peace which are a county charge upon the presentation to it of a claim by the state comptroller for such charges each quarter.

10. Such sums as the town board may determine to annually expend and raise by taxation in such town to meet the actual and necessary expenses of maintaining and continuing the association of towns of the state of New York, the New York state town clerks association, Inc., the county legislators and supervisors association of New York State and any of their activities in this state for the purpose of devising practical ways and means for obtaining greater economy and efficiency in the government thereof.

11. The fees and charges of a police justice or other officer authorized by law to be paid for services rendered and expenses incurred on account of offenses committed in a village and triable before the police justice, shall not be a town charge or be audited or paid by the town board of the town.

12. Except as otherwise provided in section one hundred seventy-one-d of the tax law, the actual and necessary expenses incurred by a town officer or a person duly elected as a town officer, in attending a course of training for his respective office provided by the town and county officers training school of the state of New York for the purpose of improving the administration of municipal affairs in the towns and counties of the state, or by a justice of the peace in attending a training school for justices provided by the education department or given in his own county, by the county magistrate's association, shall

be a charge against the town of which he is an officer or officer-elect. No such person, however, shall be allowed such expenses for attending a regional school unless his town shall be included within the area of such region as established by the education department or the board of trustees of the town and county officers training school of the state of New York.

13. The actual expense incurred in the publication and distribution of a report relative to the fiscal affairs, official acts, programs and meetings of boards, commissions, departments and other agencies, of a town.

14. Notwithstanding the provisions of this chapter or any general or special law, when incurred pursuant to resolution of the town board the cost and expense of acquiring, purchasing, leasing or rental of any labor-saving device, machine or equipment to assist a town officer in the performance of the duties of his office.

§ 117. Certain contracts and expenditures prohibited. Except as authorized by law, no officer, board, department or commission shall during any fiscal year expend or contract to be expended any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purpose, unless provision therefor shall have been made in the annual budget, and in no case in excess of the amount appropriated for such year, except pursuant to section one hundred twelve of this chapter and further excepting such leases and contracts as may have been entered into by the town for a term exceeding one year in accordance with the provisions of this chapter or any other law applicable to such town. Nothing in this section shall be construed to prevent the allowance of any claim by the town board for any lawful town purpose in excess of the amount appropriated for such year for such purposes, where the said town board has by resolution transferred sufficient funds to said budgetary fund in accordance with section one hundred twelve of this chapter, and nothing in this act shall be construed to prevent the town supervisor or the town comptroller from paying amounts in excess of the amounts

appropriated for such year in the annual budget where such transfer has been made, nor shall anything in this act be construed to require a town which has entered into a lease or contract for a term exceeding one year to pay during the current year any amounts larger than those which become due and owing during that year under the terms of such lease or contract. Any contract, verbal or written, made in violation of this section, shall be null and void as to the town and no money belonging to the town shall be paid thereon. Nothing herein contained shall be construed to prohibit the town board from making contracts for periods exceeding one year for the purposes of improvement districts whenever authorized by law.

§ 118. Form of claims. 1. Except as otherwise provided by this section, no claim against a town, except for a fixed salary, for compensation for services of officers or employees regularly engaged by the town at agreed wages by the hour, day, week, month or year, for the principal of or interest on indebtedness, or amounts becoming due upon lawful contracts for periods exceeding one year, shall be paid unless an itemized voucher therefor, in such form as the town board or the town comptroller shall prescribe, shall have been presented to the town board or town comptroller and shall have been audited and allowed. Such voucher shall be accompanied by a statement by the officer whose action gave rise or origin to the claim that he approves the claim and that the service was actually rendered or supplies or equipment actually delivered. The town board may determine, by resolution, that vouchers shall be certified or verified.

2. The town board may by resolution authorize the payment in advance of audit of claims for public utility services, postage, freight and express charges. All such claims shall be presented at the next regular meeting for audit, and the claimant and the officer incurring or approving the same shall be jointly and severally liable for any amount disallowed by the town board.

As used in this subdivision the term public utility services shall mean electric, gas, water, sewer, fuel oil and telephone services.

§ 119. Audit of claims and issuance of warrants. 1. In a town in which there is no town comptroller, the town clerk shall cause each claim presented to the town board for audit to be numbered consecutively, beginning with the number one in each year and to be stamped or otherwise marked with the date of presentation. The claims shall be available for public inspection at all times during office hours. The town board shall not be required to audit any claim until thirty days after presentation to the town clerk. The town board may, in considering a claim, require any person presenting the same to be sworn before it or before any member thereof, relative to the justness and accuracy of such claim, and may take evidence and examine witnesses in respect to the claim, and for that purpose may issue subpoenas for the attendance of witnesses, except as otherwise provided by law. When a claim has been audited by the town board the town clerk shall file the same in numerical order as a public record in his office and prepare an abstract of the audited claims specifying the number of the claim, the name of the claimant, the amount allowed and the fund and appropriation account chargeable therewith and such other information as may be deemed necessary and essential, directed to the supervisor of the town, authorizing and directing him to pay to the claimant the amount allowed upon his claim. No warrant shall be drawn against one fund or appropriation account to pay a claim chargeable to another fund or appropriation account.

2. In a town in which there is a town comptroller, he shall cause each claim presented to him for audit to be numbered consecutively, beginning with the number one in each year and to be stamped or otherwise marked with the date of presentation. The claims shall be available for public inspection at all times during office hours. The town comptroller shall not be required to audit any claim until thirty days after presentation to him. The town comptroller may, in considering a claim, require any person presenting the same to be sworn before him, relative to the justness and accuracy of such claim, and may take evidence and examine witnesses in respect to the claim and for that purpose the town comptroller may issue subpoenas for the attendance of witnesses, except

as otherwise provided by law. When a claim has been audited by the town comptroller, he shall file the same in numerical order as a public record in his office and prepare an abstract of the audited claims specifying the number of the claim, the name of the claimant, the amount allowed and the fund and appropriation account chargeable therewith and such other information as may be deemed necessary or essential, directed to the supervisor of the town, authorizing and directing him to pay to the claimant the amount allowed upon his claim. No fund and no appropriation account shall be overdrawn nor shall any warrant be drawn against one fund or appropriation account to pay a claim chargeable to another fund or appropriation account. It shall be the duty of the town comptroller to keep a separate account with each appropriation for expenditure for which funds are appropriated or raised by tax, in such manner as the state department of audit and control may direct and determine.

§ 120. Payrolls to be certified. All payrolls, or other claims for compensation, for personal services rendered to the town by any person other than an elective town officer shall be certified by the town officer or employee of the town having direct supervision of the claimant to the effect that such services indicated on such payroll or claim were actually performed by the person or persons mentioned therein. The town board may, by resolution, determine that, in lieu of certification, these payrolls and claims shall be verified by such officer or employee to the same effect.

§ 121. Payment of judgments and compromised actions, proceedings or claims. Whenever a final judgment has been recovered against a town, or an action, proceeding or claim has been compromised or settled in the manner provided in section sixty-eight of this chapter, the town board may provide by taxation the sum necessary to pay such judgment or compromised action, proceeding or claim, or may provide such sum, in whole or in part, pursuant to the local finance law.

§ 122. Advertising for bids; letting of contracts. Every officer, board or agency of a town shall let all contracts for public work and all purchase contracts to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law.

§ 122-a. Purchasing of products for public use. Notwithstanding the provisions of section one hundred three of the general municipal law, when purchasing products the officer, board or agency of a town may, wherever recycled products meet contract specifications and the price of such products is reasonably competitive, purchase such products. For the purpose of this section and until July first, nineteen hundred ninety-six, "recycled product" shall mean any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and meets secondary material content requirements adopted by the office of general services under subdivision one of section one hundred seventy-seven of the state finance law for products available to the town under state contract or, if no such contract for such product is available, any product which meets the secondary material content requirements adopted by the town with respect to a specific commodity procurement by the town. On and after July first, nineteen hundred ninety-six, "recycled product" shall mean, for the purposes of this section, any product which is manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and which meets the requirements of subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto. For the purpose of this section, "reasonably competitive" shall mean that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product.

Whenever such officer, board or agency shall purchase or cause the purchase of printing on recycled paper pursuant to this section, he or she shall require the printed material to contain the official state recycling emblem established pursuant to subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto if such paper has been approved by the department of environmental conservation as satisfying the requirements of such statute and regulation, or, if such paper has not been so approved, require the printed material to include a printed statement which indicates the percentages of pre-consumer and post-consumer recycled material content of such paper.

§ 123. Annual accounting by town officers and employees. On or before the twentieth day of January each person, who as a town officer or employee received or disbursed any moneys in the previous fiscal year, shall account with the town board for such moneys and shall produce all supporting books, records, receipts, warrants, vouchers and cancelled checks or check images as authorized by section ninety-nine-b of the general municipal law. No member of the town board shall sit as such when any account in which he is interested is being audited.

In addition, the town board shall examine the criminal and civil dockets of each town justice and shall cause to be entered in the minutes of its proceedings that such dockets have been duly examined and that the fines and fees therein shown to have been collected have been turned over to the proper officials as required by law.

Each town officer and employee, except a town justice, at the time of submitting his books and records, shall file with the town board a statement in writing showing his receipts and disbursements for the fiscal year. Such statement shall be in detail and shall be entered in the minutes of the meeting by the town clerk.

The provisions of this section requiring an annual accounting and the submission of books and records by all town officers and employees to the town board shall not apply to a town having a town comptroller, nor

to a town which, prior to the twentieth day of January, shall have engaged the services of a certified public accountant or public accountant to make an annual audit to be completed within sixty days after the close of the town's fiscal year.

Notwithstanding anything herein contained, the town board, at any time, may require any town officer or employee to submit to the board or to such certified public accountant or public accountant for examination his books, dockets, records, receipts, warrants, vouchers and cancelled checks or check images as authorized by section ninety-nine-b of the general municipal law.

§ 124. Designation of the comptroller as accounting officer.

Notwithstanding any other provision of this chapter, the town board of a town in which the office of comptroller has been established may, by resolution, determine that such officer shall be the accounting officer of the town. In such event, all of the accounting duties of the town supervisor shall be transferred to and be performed by the comptroller.

In addition to keeping detailed accounting records, the comptroller shall prepare and transmit to the town clerk the report required by subdivision ten or, if the town board shall so determine, the report required by subdivision ten-a of section twenty-nine of this chapter. He shall also render to the town board the detailed monthly statement required by section one hundred twenty-five of this chapter, and shall prepare and submit to the state department of audit and control the report required by section thirty of the general municipal law.

Notwithstanding any other provision of the highway law, social services law, or this chapter, no money shall be paid out by the supervisor except upon the warrant of the town comptroller. Every officer required to submit a monthly statement to the town supervisor pursuant to subdivision one of section twenty-seven of this chapter shall furnish a copy thereof to the town comptroller.

Nothing in this section shall be construed to relieve the town

supervisor of his duties as treasurer of the town pursuant to subdivisions one, two, three and four of section twenty-nine of this chapter.

§ 125. Duties of supervisor. Except where duties specified herein are devolved upon the town comptroller pursuant to section thirty-four of this chapter, the supervisor of each town shall have the following duties:

1. The supervisor shall keep in his records, in such manner and form as the state department of audit and control may direct, a separate account with every appropriation for which funds are appropriated or raised by tax. He shall state in every check or draft drawn by him the fund against which it is drawn and the appropriate account chargeable therewith. He shall not permit any fund or appropriation account to be overdrawn at any time nor draw upon one fund or appropriation account to pay a claim chargeable to another. In a town in which there shall be no town comptroller no money shall be paid out by the supervisor except upon the warrant, order or draft of the town clerk, after audit and allowance by the town board. In a town in which there shall be a town comptroller no money shall be paid out by the supervisor except upon the warrant, order or draft of the town comptroller, after audit and allowance thereof. The supervisor, however, may pay the principal of and interest on indebtedness, stated salaries, compensation for services of officers or employees regularly engaged by the town at agreed wages by the hour, day, week, month or year, and amounts becoming due upon lawful contracts for periods exceeding one year for which provision for payment has been made in the annual budget and payments authorized by subdivision two of section one hundred eighteen of this chapter, without prior audit.

2. The supervisor shall without prior audit, issue individual checks to the persons as authorized by the town welfare officer or pay over to the town welfare officer moneys for the revolving fund as provided by section eighty-six of the social welfare law, and the receipt of the town welfare officer shall be a sufficient voucher for such payment. The

supervisor shall render to the town board at the end of each month a detailed statement of all money received and disbursed by him for such month, and shall file a copy in the office of the town clerk.

ARTICLE 9

ORDINANCES AND LICENSES

Section 130. Town ordinances.

- 131. Definition of town ordinance.
- 132. Effect of town ordinances limited.
- 133. When ordinance shall take effect.
- 134. Proof of ordinance; maps.
- 135. Violations of ordinances.
- 136. Licensing and regulating occupations.
- 137. Issuing of licenses.
- 138. Building inspector.
- 139. Agreements with fire districts.

§ 130. Town ordinances. The town board after a public hearing may enact, amend and repeal ordinances, rules and regulations not inconsistent with law, for the following purposes in addition to such other purposes as may be contemplated by the provisions of this chapter or other laws. In order to accomplish the regulation and control of such purposes, the town board may include in any such ordinance, rule or regulation provision for the issuance and revocation of a permit or permits, for the appointment of any town officers or employees to enforce such ordinance, rule or regulation and/or the terms and conditions of any permit issued thereunder, and for the collection of any reasonable uniform fee in connection therewith. The town clerk shall give notice of such hearing by the publication of a notice in at least one newspaper circulating in the town, specifying the time when and the place where such hearing will be held, and in general terms describing the proposed ordinance. Such notice shall be published once at least ten days prior to the day specified for such hearing.

Whenever the constitutionality of any local law, ordinance, rule or

regulation of a town is brought into issue upon a trial or hearing of any civil cause of action or proceeding in any court, and the town is not a party to such action or proceeding, notice shall be served upon the town in accordance with section one thousand twelve of the civil practice law and rules.

1. Building code. Regulating the manner of construction, alteration, removal and inspection of buildings and structures of every nature and description erected or proposed to be erected in said town, and the materials to be used therefor, and in the case of buildings used for public assemblage requiring such stairways, doors, halls, exits and other facilities as may be necessary for the safety, security and comfort of persons using the same, and prohibiting any construction, alteration, or removal which does not comply with such regulations. Such regulations shall be known as the building code of the town.

2. Plumbing code. Regulating the manner of construction, alteration, removal and inspection of all plumbing and drainage systems in existing or proposed buildings and structures and the materials to be used therefor, and the location of cess-pools and sewer systems, the manner of construction and the materials to be used therefor, and the manner in which connections shall be made with main sewers, drains and water mains, and the materials to be used therefor, and prohibiting any construction, alteration or removal or the use of any materials which do not comply with such regulations. The town board may either adopt the standard plumbing code recommended by the state department of health or may formulate other rules and regulations relating to plumbing. Such regulations shall be known as the plumbing code of the town.

3. Electrical code. Regulating the manner of construction, alteration, removal and inspection of all electrical work in existing or proposed buildings and structures and the materials to be used therefor, and prohibiting any construction, alteration or removal or the use of any materials which do not comply with such regulations. Such regulations shall be known as the electrical code of the town.

3-a. Housing code. Regulating and establishing minimum standards

governing the condition, occupancy, and maintenance of dwellings, dwelling units, rooming houses, rooming units and premises; establishing minimum standards governing utilities, facilities, and other physical components and conditions essential to make dwellings, dwelling units, rooming houses, rooming units, and premises safe, sanitary and fit for human habitation; fixing certain responsibilities and duties of owners, operators, agents, and occupants of dwellings, and dwelling units, rooming houses, and rooming units; authorizing and establishing procedures for the inspection of dwellings, dwelling units, rooming houses, and rooming units, and the condemnation and vacation of those dwellings, dwelling units, rooming houses, and rooming units unfit for human habitation. The provisions of this subdivision shall apply only to one and two family dwellings, provided, however, that nothing herein contained shall be construed to affect the power of a town to enact or adopt local laws, ordinances or regulations, with respect to multiple dwellings, pursuant to the provisions of section three hundred twenty-nine of the multiple residence law.

4. Sidewalks. Regulating the manner of construction, reconstruction and repair of sidewalks, the materials to be used, the grades and the widths thereof and prohibiting any construction, reconstruction or repair which does not comply with such regulations; requiring the owner and occupant of premises abutting on any street where a sidewalk has been laid, to keep the sidewalk in front of such premises, free and clear from snow, ice, dirt and other obstructions and upon default thereof provide for the removal thereof at the expense of the owners of such premises and that such charge shall become a lien upon the premises benefited thereby, until paid.

5. Fire prevention. Regulating the erection of buildings where extra hazardous business is to be carried on and the carrying on of such business: Regulating the attendance in public buildings and the use of aisles as standing room for spectators and the erection of fire escapes on all public buildings: Regulating the construction and use of all heating systems and devices employing heat or fire or conducting smoke for any purpose: Establishing fire limits and prohibiting the erection of frame buildings or structures therein: Preventing and extinguishing

fires and regulating conduct thereat: Regulating the use, sale, storage and transportation of fire arms, fire works, explosives and inflammables or prohibiting the use, sale, storage and transportation of any of them: Requiring the deposit of ashes and waste in safe receptacles and places: Prohibiting bonfires in the streets and public places and regulating the manner in which they may be permitted in other places: Requiring the cutting, trimming and removal of brush, grass and weeds and the removal of rubbish and the elimination of fire hazards: Protecting and preserving the property and apparatus of any fire company or department: Regulating the parking of automobiles or other conveyances in the locality of fire houses and hydrants: Providing for punishment for insubordination or disorderly conduct at fires or the wilful neglect or refusal to obey or the attempt to prevent or obstruct the lawful orders of a person in charge of the operations of a fire department or fire company: Preventing damage by fire and protecting property exposed to destruction by fire: Providing for the voluntary destruction either in part or in whole of buildings and property to arrest fire or extinguish the same, and for all other things necessary or helpful for the prevention of fire or the extinguishing thereof and for such other further purposes as shall tend to provide for the general safety of persons and property within the town.

6. Public dump and dumping ground. Prohibiting and/or regulating the use of any lands within the town as a dump or dumping ground.

7. Use of streets, highways, sidewalks and public places. (a) Regulating the use of streets, highways, sidewalks and public places by pedestrians, animals, motor and other vehicles, including local and interurban street cars; restricting parking of all vehicles therein; regulating parades and public assemblages therein; regulating or prohibiting coasting therein; and, subject to the approval of the department of transportation, requiring railroad companies to employ and maintain competent flagmen and erect gates at any street or highway crossing; prohibiting the deposit of any dirt, filth, waste or rubbish in any street, highway, sidewalk, that part of any waterway within its jurisdiction or public place or incumbering thereof by any encroachment of buildings, structures, excavation or otherwise; regulating the manner

in which excavation may be made in or under the streets, highways, sidewalks or public places and requiring an indemnity bond as a condition precedent thereto or the town board may require as the condition precedent thereto, the deposit in cash of such an amount as the board may determine necessary to cover the probable expense to the town of the replacement by the town of the street, highway, sidewalk or public place, and the unexpended balance, if any, shall be refunded to the depositor; providing for the removal of snow and ice therefrom; prohibiting the use by owners and occupants of property abutting on public streets or grounds of barbed wire or similar fences along the boundaries of such street or grounds.

(b) If the front or other exterior wall of any building erected on or before the first day of January, nineteen hundred forty, in any town encroaches not more than six inches upon any street or highway, no action or proceeding to compel the removal of such wall shall be instituted or maintained by or on behalf of the town, or by or on behalf of any person claiming an easement in or title to the portion of the street or highway on which such wall encroaches, unless such action or proceeding be commenced within the period of one year from the time this act takes effect, and unless within such period a notice of the pendency of such action or proceeding, describing the property on which said building stands and indexed against the owner thereof, be filed in the office of the clerk of the county in which the property lies.

(c) If the front or other exterior wall of any building erected after the first day of January, nineteen hundred forty, in any town encroaches not more than six inches upon any street or highway, no action or proceeding to compel the removal of such wall shall be instituted or maintained by or on behalf of the town, or by or on behalf of any person claiming an easement in or title to the portion of the street or highway on which such wall encroaches, unless such action or proceeding be commenced within the period of one year from the time of the serving of a notice as hereinafter provided, and unless within such period a notice of the pendency of such action or proceeding, describing the property on which said building stands and indexed against the owner thereof, be filed in the office of the clerk of the county in which the property lies. Any person having any interest in the property on which such building stands may serve a notice on the town clerk, town supervisor or

on such town officer as the town board shall authorize and direct to defend or appear in any action or legal proceeding against said town, of the town in which said property lies, setting forth a brief description of the property, his interest therein, and the existence of an encroachment on the street or highway. Such notice, together with proof or admission of service thereof, shall be filed in the office of the clerk of the county in which such property lies. The clerk shall index and record such notice as if it were a notice of the pendency of an action and shall collect the usual fees for recording and indexing a notice of the pendency of an action.

(d) If no action be brought within the period hereby limited therefor the owners and encumbrancers of such property shall be deemed to have an easement for the maintenance of the encroaching wall so long as the said wall shall stand, and no longer.

(e) If the front or other exterior wall of any building erected on or before the first day of January, nineteen hundred sixty-five in any town encroaches not more than six inches upon any town street or town highway, the local legislative body of any town may authorize the maintenance of such encroachment by ordinance during the period of time the encroaching wall is in existence; provided, however, that such authorization shall not confer any right or claim to be asserted against such town or the state.

(f) The owner of real property upon which the front or exterior wall of any building thereon encroaches upon any town street or highway, may submit a request, in writing, to the town board of such town for authorization to maintain such front or exterior wall during the time such wall is in existence.

(g) Upon presentation of such request, notice thereof shall be given to the town highway superintendent, who shall recommend to the town board the proposed action on such request. Within thirty days of the presentation of such request, the town board shall determine if the granting of such request shall adversely impact upon the users of the town street or highway. In the event a determination is made that such encroachment does adversely impact upon the use of the town street or highway, such request shall be denied. In the event a preliminary determination is made that such encroachment may have no adverse impact upon the use of the town street or highway, the town board shall within

thirty days after the issuance of such preliminary finding, hold a public hearing upon such request, which public hearing shall be conducted upon not less than ten days notice to the public. In addition to such public notice, the owners of property, as determined from the last completed assessment roll, within five hundred feet of the property as measured from the intersections of the property lines with the town street or highway shall be given notice by certified mail of such public hearing.

(h) If, upon the completion of the public hearing, the town board determines that such front or exterior wall does not interfere or impede the right of the public to use such town street or highway, the town board may grant to the owner of such property a license to continue to maintain such front or exterior wall during the period such wall is in existence; provided however, such town shall have the authority to revoke such license at any time in the event the town board determines that such town street or highway will be improved and as a result of such improvement the front or exterior wall will then impede, interfere with or obstruct traffic or the use of the town street or highway; provided, further, that such license shall not confirm any right or claim against such town. In such event the owner of the property shall be given notice of the proposed action and shall, within the time set forth in the notice, remove such front or exterior wall from the town street or highway.

(i) Upon the abandonment of the building or in the event such building, because of a lack of care enters a state of disrepair, the owner thereof shall remove such front or exterior wall upon notice from the town board.

(j) The authority granted to a town pursuant to paragraphs (f), (g), (h) and (i) of this subdivision may, by local law, be assigned to any department or agency of the town.

7-a. Location and construction of driveways. Regulating the location and manner in which driveway entrances and exits may be constructed by owners and occupants of property abutting on town highways; provided, however, that such regulations shall not deny access from abutting property upon town highways, when such abutting property is a legal lot in accordance with existing statutes and ordinances.

8. Smoke, gases and wastes. Regulating and prohibiting the unnecessary emission of smoke, noxious gases, deposits, dusts, trade wastes and other pollutions from buildings, engines, locomotives and other sources, and regulating, restricting and prohibiting the unnecessary use of bituminous coal within the town or any portion thereof, when such use would affect the public health.

9. Animals. Regulating the keeping of calves; regulating and prohibiting the keeping of swine and mink, restraining the running at large of horses, cattle, sheep, unmuzzled dogs, whether licensed or not, fowls and other animals and authorizing the impounding and sale of the same for the costs of keeping, proceedings and penalty, or the killing of unmuzzled dogs.

10. Malicious mischief. Punishing the wilful and malicious breaking, marring, injuring, removing or defacing of any building or structure, fence, awning, sign board, tree, crop, shrubbery or other property; the tearing down of notices lawfully posted; the removal or alteration or any unlawful interference with stakes set out by engineers, surveyors or otherwise to indicate boundaries or other lines.

11. Peace, good order and safety. Preserving the public peace and good order; preventing and suppressing vice, immorality, disorderly and gambling houses and houses of ill-fame, riots and tumultuous assemblages, unnecessary crowds upon the streets, or in doorways or stairways adjacent thereto, or loitering about such places, preventing unreasonably loud or disturbing noises, determined by the board to be of a character, intensity or duration as to be detrimental to the peace, welfare or good order of the people, and preventing all disorderly, noisy, riotous or tumultuous conduct within the town, disturbing the peace and quiet of the town or any meeting or assembly therein; except when prohibited by reason of the laws of the United States, regulating the use of beaches in or adjacent to the town and regulating swimming and bathing in open water exposed to the public including the use of underwater diving devices for swimming and fishing, within or bounding the town or such beaches to a distance of fifteen hundred feet from the

shore and requiring the owners or operators of any bathing beaches, bath houses or other places charging a fee to the public for the use of any such facilities to provide adequate safeguards for the protection of persons bathing in waters adjacent to such premises; prohibiting profane, vulgar or obscene language or conduct in any street or public place in the town.

12. Amusements. Regulating public dance halls and all places where dancing is permitted; specifying the hours during which such dancing may continue, the supervision thereof, the minimum age of persons allowed to attend, and all other matters relating to the conduct thereof; regulating the conduct of circuses, theatres, pool and billiard parlors, bowling alleys, athletic contests or exhibitions, and all similar places of amusement for money or hire.

13. Beverages and eating places. Regulating all places selling or offering for sale at retail for consumption on the premises any beverage or food stuff; providing for sanitation and cleanliness and the inspection thereof and defining the opening and closing hours and all other matters related thereto.

14. Slaughtering houses and rendering works. Regulating the location, operation, cleaning and removal of slaughter houses, fat, offal or other rendering or reduction works or establishments and unwholesome and noisome buildings or places.

15. Promotion of public welfare. Promoting the health, safety, morals or general welfare of the community, including the protection and preservation of the property of the town and of its inhabitants, and of peace and good order, the benefit of trade and all other matter related thereto, insofar as the same shall not be inconsistent with existing law.

15-a. Excavated lands. Any town may adopt an ordinance giving to the appropriate officials of such town, upon the direction of the town board, the right and power to fill in excavated lands and property if, after a hearing, the existence of such lands and property are deemed by

the town board to constitute a hazard to public safety and if, after giving thirty days' notice by certified mail addressed to the owner of record of such lands and property at the address shown on the last preceding assessment roll, such excavated lands and property are not filled in by or on behalf of such owner. Where the excavated lands are filled in by the town, the cost thereof shall be assessed against such lands and property by such town officer as may be designated by such ordinance. The town officer so designated shall serve personally or by certified mail upon the owner of such property at the same address a written notice, stating that at a time and place specified therein, he will assess such cost against such property. Such notice shall be served at least eight days previous to the time specified therein. If directed against a corporation, it may be served upon the corporation at its principal place of business, place of business upon an agent of the corporation within the town, or upon the secretary of state. Notice served upon the secretary of state shall be served at least twelve days previous to the time specified therein. At the time and place so specified, he shall hear the parties interested, and shall thereupon complete the assessment, stating therein, the name of each owner and the amount so assessed, and shall return such assessment to the town clerk who shall present the same to the town board. Such town board shall certify such assessment to the board of supervisors who shall cause the amount stated therein to be levied against such property and any uncollected assessment shall be a lien upon the land affected. Such amount shall be levied and collected at the same time and in the same manner as other town taxes, and shall be paid to the supervisor of the town, to be applied in reimbursing the fund from which such cost was defrayed.

15-c. Screening facilities in the towns of the counties of Nassau, Rockland and Westchester and certain towns in the county of Suffolk required by zoning boards of appeals or zoning ordinances. Any town in the counties of Nassau, Rockland and Westchester and the towns of Huntington, Babylon, Brookhaven, Islip, Southampton and Smithtown in Suffolk county may adopt an ordinance giving to the appropriate officials of such town, upon the direction of the town board, the right and power to erect, replace, repair or maintain fences, trees,

plantings, shrubbery or other screening on land located in such town where such screening facilities are required by direction of a town board of zoning appeals or by zoning ordinance and there is a failure to comply with such direction, and if, after giving thirty days' notice by registered mail addressed to the owner of record of such land at the address shown on the last preceding assessment roll, such fences, trees, plantings, shrubbery or other screening are not so erected, replaced, repaired or maintained by or on behalf of such owner; and the town board may provide for the assessment of all costs and expenses so incurred by the town, in connection with any action taken as above, against the land on which such screening facilities are located.

16. Unsafe buildings and collapsed structures. Providing for the removal or repair of buildings in business, industrial and residential sections that, from any cause, may now be or shall hereafter become dangerous or unsafe to the public; providing as follows:

a. For an inspection and report by an official duly appointed by the town board;

b. For a notice to be served on the owner or some one of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in same, either personally or by registered mail, addressed to the last known address, if any, of the owner or some one of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in same, as shown by the records of the receiver of taxes and/or in the office of the county clerk or county register, containing a description of the premises, a statement of the particulars in which the building or structure is unsafe or dangerous and an order requiring same to be made safe and secure or removed; and if such service be made by registered mail, for a copy of such notice to be posted on the premises.

c. For time within which person served with such notice may commence the securing or removal of buildings or structures;

d. For the filing of a copy of such notice in the office of the county

clerk of the county within which such building or structure is located, which notice shall be filed by such clerk in the same manner as a notice of pendency pursuant to article sixty-five of the civil practice law and rules, and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this paragraph. A notice so filed shall be effective for a period of one year from the date of filing, provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon the consent of the town attorney. The clerk of the county where such notice is filed shall mark such notice and any record or docket thereof as cancelled of record upon the presentation and filing of such consent or of a certified copy of such order.

e. For a hearing before the town board, notice of which and the time and place thereof to be specified in the notice to repair or demolish; served upon the owner and such persons having an interest in the property or structure as is herein prescribed.

f. For the removal of such building or structure by the town in the event such owner fails or refuses to repair or remove the same within the time provided.

g. For the assessment of all costs and expense incurred by the town in connection with the proceedings to remove or secure, including the cost of actually removing said building or structure, against the land on which said buildings or structures are located.

17. Regulation of vessels, personal watercraft and specialty prop-craft. Except when prohibited by the laws of this state or of the United States; (1) a. Regulating the speed and regulating and restricting the operation of vessels, personal watercraft and specialty prop-craft and, in the counties of Westchester, Saratoga, Warren and Suffolk the size and horse power of inboard and outboard motors, while being operated or driven upon any waters within or bounding the town to a distance of fifteen hundred feet from the shore except that in Nassau and Suffolk counties, towns may regulate and restrict the speed and regulate and restrict the operation of vessels in all tidal waters upon

lands within the geographic boundaries of such town and those tidal waters contiguous with the town to a distance of fifteen hundred feet from shore and not within any other town. With respect to personal watercraft and specialty prop-craft, regulations may include a prohibition of their use provided such prohibition does not prevent access to federally maintained and designated channels and, notwithstanding any other provision of law, such prohibition shall not be adopted unless the town complies with the public hearing requirements and the requirements for signage as set forth in section forty-six of the navigation law.

b. Restricting and regulating the anchoring or mooring of vessels in any waters within or bounding the town to a distance of fifteen hundred feet from the shore.

c. Restricting and regulating the anchoring or mooring of vessels in such waters when used or occupied as living or sleeping quarters and, providing time limits on duration of the stay of such vessels in such waters and requiring inspection and registration of such vessels when so used.

d. Restricting and regulating sewage disposal and garbage removal from said vessels and use of toilets thereon. The term "sewage" as used in this subdivision shall mean all human body wastes.

e. Designating public anchorage area or areas and regulating the use thereof.

(2) The provisions of this subdivision shall not apply to waters within or bounding an incorporated village to a distance of fifteen hundred feet from the shore, jurisdiction with respect to which is vested in the board of trustees of a village by the provisions of subdivision one of section forty-six-a of the navigation law.

18. Shellfish. a. Regulating the taking and the manner of taking clams, oysters, scallops and other shellfish from the lands of or from waters over the lands of

(1) a town vested with the title to, or holding a lease on, lands

under tidewater in any harbor, bay or creek, and vested with the right of fishing, or

(2) the trustees of the freeholders and commonalty of a town in which such trustees are vested with title to such lands and the right of fishing, provided that such trustees shall file with the town clerk an application in writing therefor.

b. Such ordinance in either case shall not be less restrictive than the environmental conservation law or, where such law authorizes the department to establish lesser restrictions, the regulations made pursuant to such law, and may provide

(1) that no dredge or scrape shall be used for such purpose except by a lessee upon lands held by such lessee under lease;

(2) that no dredge or scrape shall be on board of any boat except that of a lessee while upon water covering lands held by such lessee under lease and while navigating between the dock, anchorage or moorage used by such lessee and such leased land;

(3) that no dredge or scrape shall be on board of any boat while used for taking shellfish from such lands except by a lessee of lands as in this subdivision provided;

(4) that each person upon a boat upon which there is a dredge or scrape except as in such ordinance permitted by a lessee shall be a violator of such ordinance;

(5) That no person shall take any shellfish from such lands, except a lessee from lands held by such lessee under lease, unless such person shall have received from the proper and duly constituted authority a written license or permit permitting such person to take such shellfish, and a license or permit granted to any person shall upon such person's conviction of a violation of such ordinance, be terminated and void; and

(6) that any person making unlawful entries upon such lands may be proceeded against by injunction to restrain a continuing trespass as well as for violation of said ordinance.

c. Such ordinance shall not apply to the use of a dredge or scrape by the owner, the town or such trustees, for the purpose of removing diseased or blighted shellfish from such lands or to any operation by a town or such trustees incident to transplanting shellfish within such

town.

19. Trespass. Prohibiting trespass to public and private property, for the purpose of protection and preservation of the property of the town and of its inhabitants and of peace and good order.

20. Hotels, inns, boarding houses, etc. Regulating hotels, inns, boarding houses, rooming houses, lodging houses, associations, clubs or any building or part of a building used in the business of renting rooms, individual or several, and also private sanatoriums, convalescent homes, homes for aged or indigent persons, day nurseries, hospitals, rest homes or any building or part of a building used for similar purposes, containing a total number of beds, cots or similar equipment providing sleeping accommodations for more than five persons; specifying the type of construction, the manner of their running and operation and prescribing regulations assuring proper sanitation, cleanliness and fire protection.

21. House trailer camps, tourist camps and house trailers. Regulating house trailer camps, tourist camps or similar establishments; requiring approval of suitable plans for house trailer camps and tourist camps and prescribing regulations therefor including provision for sewer connection, water supply, toilets, bathing facilities, garbage removal, registration of occupants, inspection of camps. The town board may either adopt the provisions of the sanitary code established by the public health and health planning council or may formulate other rules and regulations relating to house trailer camps, tourist camps or similar establishments not inconsistent with the provisions of such state sanitary code. Regulating the parking, storage or otherwise locating of house trailers when used or occupied as living or sleeping quarters in any part of the town outside an established house trailer camp, tourist camp or similar establishment; providing time limits on duration of the stay of such house trailers and requiring registration of such house trailers when so used.

22. Air-ports and flying fields. Regulating air-ports and flying fields, and property or spaces adjacent thereto occupied or used in

connection therewith or in the operation thereof for the purpose of the parking or accommodation of automobiles or other vehicles; locating and regulating the flow of vehicular traffic in, to and from such used or occupied spaces; requiring that such used or occupied spaces be kept free of stagnant pools of water and other disagreeable odor producing causes; requiring proper and adequate sanitary facilities, including toilets, water supply, and garbage or waste containers at suitable locations thereon and providing for the proper removal of the contents thereof, and that such spaces be otherwise kept in a clean and sanitary condition; requiring that any such used portions thereof be kept and maintained free from dust by the use of oil or other preventative, or by other means; requiring that the owner thereof adequately police such properties to prevent the commission of crime and/or injury to person or property while thereon.

23. Sand pits, quarries, top soil and other excavations. Regulating the manner of construction on, removal of material from, filling up, draining, cleaning, operating and using any lands or other premises for sand or gravel pits, stone quarries, stripping of top soil, or for other excavation purposes and prohibiting the use of any lands or other premises for the aforesaid purposes which do not comply with such regulations.

23-a. The town board of the town of Southold in the county of Suffolk, is authorized to regulate by ordinance consistent with the provisions of the public health law and any other general law the raising and keeping of ducks within such town.

24. Riding stables and riding academies. Regulating, controlling, or prohibiting riding stables, riding academies, or similar establishments; requiring approval of plans for the construction and location of stables; prescribing regulations for the care of horses; regulating bridle paths and bridle trails; prohibiting or regulating night riding of horses; and otherwise providing for the care and safety of horses and riders.

25. Building lines. Establishing building lines in a public highway or

highways and requiring all buildings hereafter erected to be within such lines.

26. Air guns. Regulating or prohibiting the possession, sale and use of air guns, spring guns or other instruments or weapons in which the propelling force consists of springs or air.

27. Firearms. In the towns of Huntington, Babylon, Smithtown, Islip, Brookhaven, Riverhead and Southampton, in the county of Suffolk, in the town of Niskayuna in the county of Schenectady, in the town of Ramapo in the county of Rockland, in the towns of Irondequoit, Greece, Pittsford, Brighton, Penfield, Perinton, Webster and Gates in the county of Monroe, in the town of Colonie in the county of Albany, and in the towns of Vestal and Union in the county of Broome prohibiting the discharge of firearms in areas in which such activity may be hazardous to the general public or nearby residents, and providing for the posting of such areas with signs giving notice of such regulations, which ordinances, rules and regulations may be more, but not less, restrictive than any other provision of law. Thirty days prior to the adoption of any ordinance changing the five hundred foot rule, a notice must be sent to the regional supervisor of fish and game of the environmental conservation department, notifying him of such intention.

28. Billiard rooms. In towns, subject to a permissive referendum, setting the minimum age of minors to be allowed upon the premises provided, however, that an ordinance shall only allow such minor upon the premises when accompanied by adult supervision as part of an organized youth activity. For purposes of this subdivision an organized youth activity shall not include activities sponsored primarily by persons under eighteen years of age.

29. Loitering. Prohibiting and punishing loitering; provided however, that such ordinance or law shall only prohibit loitering for a specific illegal purpose or loitering in a specific place of restricted public access and shall therein set forth guidelines for application of such prohibitions by law enforcement officers so as to prevent arbitrary or discriminatory enforcement of such prohibitions.

§ 131. Definition of town ordinance. A town ordinance includes also a rule or regulation of the town board, for the violation of which a penalty is imposed; and each provision of this chapter relating to the enforcement of an ordinance applies to such rule or regulation.

§ 132. Effect of town ordinances limited. A rule, regulation or ordinance of a town shall be effective and operative only in that portion of such town outside of any incorporated village or city therein, except as otherwise specifically provided by statute.

§ 133. When ordinance shall take effect. Every ordinance and every amendment to an ordinance hereafter adopted or approved by the town board of a town to which the provisions of this article are applicable, shall be entered in its minutes except that it shall not be necessary to enter in its minutes any map adopted or approved in connection with a zoning ordinance or amendment. The ordinance or amendment, or a summary or abstract thereof, shall be published in the official newspaper of the town or, if there is none, in a newspaper designated by the town board having general circulation in the town, once, and the affidavit of such publication shall be filed with the town clerk. Such ordinance or amendment shall take effect ten days after such publication; but such ordinance or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the town clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes. No ordinance or amendment previously adopted or approved by any town board of a town to which the provisions of this article are applicable shall be void for failure of posting and/or filing affidavits of posting.

§ 134. Proof of ordinance; maps. The certificate of the town clerk setting forth that the records of the town show the adoption of one or more ordinances and the publishing thereof as required by this chapter

shall be presumptive evidence of such adoption and publication in any action or special proceeding in any court or otherwise.

§ 135. Violations of ordinances. 1. A violation of any ordinance, rule or regulation adopted by the town board pursuant to this chapter is hereby declared to be a misdemeanor except as otherwise provided by law and except that any such violation of a provision of a town building code or zoning ordinance shall be deemed an offense against such code or ordinance, and the town board may provide for the punishment thereof by fine or imprisonment or both; provided, however, that for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of a town building code or zoning ordinance shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. It is also empowered to provide civil penalties for such violation. The town board may also maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any such ordinance, rule or regulation, notwithstanding that the ordinance, rule or regulation may provide a penalty or other punishment for such violation.

2. Notwithstanding the provisions of subdivision one hereof the town board of any town may designate that the violation of any ordinance, rule or regulation adopted by such board or any specific provision or provisions thereof shall be deemed an offense against such ordinance, rule, regulation, or provision thereof, and the town board may provide for the punishment thereof by fine or imprisonment or both; provided, however, that for the purpose of conferring jurisdiction upon courts and judicial officers generally, such violation shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.

§ 136. Licensing and regulating occupations. The town board may provide by ordinance for the licensing and otherwise regulating of:

1. Auctioneers, employment agencies, collateral loan brokers, junk dealers and dealers in second hand articles; the running of public carriages, cabs, hacks, carts, drays, express wagons, automobiles or other vehicles for the transportation of persons or property over or upon the streets of a town for hire, and soliciting either on private property or on the public highway or running therefor, or for hotels, boats, lodging houses or garages; auctioneering, hawking and peddling, except the peddling of meats, fish, fruit and farm produce by farmers and persons who produce such commodities.

2. The doing of a retail business in the sale of goods of any description within the limits of the town from canal boats, in the canals, or from the lands by the side of such canals and within the boundary lines thereof, or from boats on a lake or river, except products of the farm and unmanufactured products of the forest.

3. Circuses, theatres, motion picture houses, shows or other exhibitions or performances, the keeping of billiard or pool rooms, bowling alleys, shooting galleries, skating rinks, amusement parks and other similar places of amusement, for money or hire; or the giving of exhibitions, performances or entertainments in any place within the town.

4. The use of any public hall or opera house; but such place shall not be licensed unless it has suitable and safe means of ingress and egress in case of panic or fire.

5. The running of restaurants, eating places, lunch counters, soft drink counters or similar places for the sale for consumption upon the premises of beverages of any class or description.

6. The use of any hall or place other than private homes for dancing whether in connection with some other use of the premises or otherwise, whether or not such dancing is open to the general public.

7. In a town of the first or second class, the doing of plumbing, heating, ventilating and electrical work; provided, however, that

employees of public service corporations shall not require a license while engaged in the work of such corporations.

8. The collection of garbage.

9. In any town in a county having a population of more than seven hundred fifty thousand, other than a county wholly included in a city, the running, operation or conducting the business of a laundromat, launderette or other coin operated machine establishment for clothes washing, drying or dry cleaning or any combination of such operations.

10. The running of hotels, inns, boarding houses, rooming houses, lodging houses and associations or clubs furnishing services ordinarily furnished in hotels, inns, boarding houses, rooming houses and lodging houses.

11. The running, operation or conducting business of house trailer camps, tourist camps, or similar establishments.

12. In any town in the counties of Cortland, Erie, Monroe and Suffolk, or in a county adjoining a city having a population of one million or more, or in any town adjacent to such a county, the operation and use of any lands or premises for the excavation of sand, gravel, stone or other minerals and the stripping of top soil therefrom.

13. The running, operation or conducting the business of riding stables, riding academies, or similar establishments.

14. The running, operation or conducting the business of raising mink.

§ 137. Issuing of licenses. If any such trade, occupation or use of premises shall be prohibited without a license, the town board shall establish uniform fees for the issuance of such licenses and may require applicants for licenses to submit written applications supplying under affidavit such information as the town board may require.

Upon receipt of the license fee therefor, the town clerk, or the building inspector as provided in section one hundred thirty-eight of this chapter, shall issue a license specifying the trade, occupation or use of premises thereby authorized and such license shall become effective from the date thereof and shall continue in force for the term specified therein but shall not be transferable. Such a license shall not be issued for a longer term than one year from the date thereof. The town board may by resolution provide for the staggering of licensing periods. Should such action result in a licensing period which is shorter than the regular licensing period, the town clerk shall adjust the fee proportionately. A license may be refused if the applicant shall have been convicted of a misdemeanor or felony, which in the judgment of the town clerk or the building inspector renders the applicant unfit or undesirable to carry on the trade or occupation involved. The town clerk or the building inspector may also refuse a license to any person who in his judgment shall be an undesirable person or incapable of properly conducting the trade or business desired. Any applicant who has been refused a license by the town clerk or the building inspector may apply to the town board therefor, and the same may be granted or refused by the board, except as prohibited herein. After a public hearing thereon at which the licensee shall have an opportunity to be heard, the town board may revoke any license issued under authority of this article to any applicant whom the town board shall determine to be an undesirable person or incapable of properly conducting the trade or business previously licensed. The granting, refusal or revocation of such license by the town board shall be subject to review by certiorari.

§ 138. Building inspector. The town board of any town which shall have adopted a building code, plumbing code, electrical code, housing code, or ordinances, rules and regulations for fire prevention, or for the removal or repair of unsafe buildings or collapsed structures, or for any of such purposes, pursuant to the provisions of this article, may appoint a town building inspector, and in a town of the first class such assistants thereto as the town board may determine necessary, and fix the compensation thereof. Such inspector shall have charge of the enforcement of such codes, ordinances, rules and regulations of the town

and of the zoning ordinance of the town, if there be one, and for such purposes such inspector, and his assistants, if any, shall have the right to enter and inspect at any time any building, structure or premises and to perform any other act necessary for the enforcement of such codes, ordinances, rules or regulations, or any of them. In any such town, the town board may appoint a deputy building inspector to assist the building inspector in the duties of his office. Such deputy building inspector and assistant building inspectors shall perform such duties not inconsistent with law as shall be assigned to them, respectively, by the building inspector and in the performance thereof shall have the same right to enter and inspect any building and perform other necessary acts as hereinbefore conferred upon the building inspector.

Any license or permit required, under the provisions of the building code, plumbing code, electrical code or housing code shall be issued by the building inspector or deputy building inspector. Notwithstanding the provisions of subdivision one of section thirty-seven of this chapter, the town board may direct that fees for licenses and permits issued by the building inspector or deputy shall be payable to and collected by such inspector.

All charges and expenses, including salaries, incurred by the building inspector and his deputy and assistants in connection with his duties under this section, less fees, collected if any, shall be a charge upon the taxable property of that part of the town outside of any incorporated village and shall be assessed, levied and collected therefrom in the same manner as other town charges levied on property outside of villages.

§ 139. Agreements with fire districts. If in the judgment of the town board it is advisable for the safety and welfare of the inhabitants of a fire district in the town that the issuance of a town fire permit to burn grass, leaves, brush, rubbish, refuse, buildings or other materials in a fire district should be issued, and preliminary investigations in relation thereto should be made, by a person or persons most familiar

with local grass and brush fire hazard conditions in the fire district and the availability of fire-fighting vehicles and firefighters, then the town board, notwithstanding the provisions of section one hundred thirty-eight of this chapter, may provide in any fire prevention code, whether adopted by local law or by ordinance, that an agreement may be entered into with the board of fire commissioners of any fire district located wholly or partly in the town that the issuance of such permits, and preliminary investigations in relation thereto, on behalf of the town will be performed by the fire district within the limits of such district in such town, the fire district to utilize the services of the chief engineer and assistant engineers of the fire district fire department in the performance of such duties agreed to be performed by the fire district. Any such agreement shall be for such period of time and on such terms as may be agreed upon, except that it shall provide (1) that it may be terminated by the town after written notice to the fire district and after a change in such fire prevention code to provide a different procedure for issuing such permits will become effective and (2) that it may be terminated by the fire district upon sixty days written notice to the town. If any fire prevention code contains such a provision authorizing such an agreement, the town board of the town and the board of fire commissioners of any fire district located wholly or partly in the town shall have power to enter into such agreement.

ARTICLE 9-A

SELF-SUPPORTING IMPROVEMENTS

Section 140. Definitions.

141. Acquisition or establishment of self-supporting improvements.

142. Charges for use of self-supporting improvements.

143. Use of self-supporting improvements.

§ 140. Definitions. As used in this article: The term, "self-supporting improvements" shall mean any dock, pier, wharf, bathing beach or recreational facility and parking areas in connection therewith, established pursuant to this article from which revenues are

obtained by the imposition and collection of rates, fees, tolls or admissions.

§ 141. Acquisition or establishment of self-supporting improvements.

The town board of any town in Suffolk county and of any suburban town may, by ordinance, provide for the acquisition, construction, lease or purchase of any self-supporting improvement, or may establish any existing dock, pier, wharf, bathing beach or recreational facility, and parking areas in connection therewith as a self-supporting improvement, pursuant to the provisions of this article.

§ 142. Charges for use of self-supporting improvements. The town board of any town in Suffolk county and of any suburban town, may, by ordinance, rule, or regulation after a public hearing held on notice published at least once in a newspaper circulating in the town, not less than ten days prior to such hearing, establish or revise charges for the use or enjoyment of any self-supporting improvement. Such town board shall establish charges for the use or enjoyment of any such improvement for a daily, hourly or single use of such improvement. In addition to such daily, hourly or single use charges, the town board of any such town may establish weekly, seasonal or annual charges for the use or enjoyment of any self-supporting improvement. Applications for weekly, seasonal or annual permits to use such self-supporting improvement shall be made on forms supplied by the officer or employee placed in charge thereof by the town board of such town, and the charges therefor shall be paid upon the issuance of such permits. Such charges shall be used only for the purpose of operating, maintaining and improving such self-supporting improvement, including reserves and the payment of principal and interest on any bonds, notes or other obligations issued for the acquisition, construction, lease, purchase, improvement or reconstruction of any such self-supporting improvement.

§ 143. Use of self-supporting improvements. The town board of any town in Suffolk county and of any suburban town may, by ordinance, rule or

regulation after a public hearing, held on notice as prescribed in section one hundred forty-two of this chapter, limit the use of such self-supporting improvement to residents of the town and/or limit the number of persons who may be permitted to use any self-supporting improvement at any time to the number of users which such town board shall find such self-supporting improvement may efficiently and economically serve or accommodate and limit admission or use to the persons applying therefor in the order in which applications for admission are made.

ARTICLE 10

POLICE

Section 150. Establishment of town police departments.

- 151. Qualifications.
- 152. Promotion.
- 153. Transfers.
- 154. Administration.
- 154-a. Physical examinations.
- 155. Discipline and charges.
- 156. Effect of resignation.
- 157. Absentee leave.
- 158. Special police officers.

§ 150. Establishment of town police departments. 1. The town board of any town may establish a police department and appoint a chief of police and such officers as may be needed and fix their compensation. The compensation of such police officers shall be a town charge; providing however, no assessment on property in any village within any town or partially within any town shall be made for the maintenance or operation of a town police department established after January first, nineteen hundred sixty, pursuant to this section if any such village maintains a police department of four or more police officers on an annual full-time basis, established and maintained under the rules of civil service. The town board may, at its option, determine that the town shall pay all or part of the cost of the uniforms and necessary equipment of its police

officers, and may purchase such equipment for use by the police department as it shall deem necessary, including police patrol vehicles, and emergency service vehicles for police use in connection with accidents, public calamities or other emergencies. No assessment on property in any village within any town in the county of Suffolk or in any village within the town of Fallsburgh shall be made for the maintenance or operation of such town police department, if any such village maintains a police department of two or more police officers on an annual basis. In the event that a town has established a police department prior to January first, nineteen hundred sixty, the town board of such town may enter into an agreement with any village within it or partially within it which maintains a police department of four or more police officers on an annual full-time basis, established and maintained under the rules of civil service and determine therein what part of the cost thereof shall be assessed against the property in the village and what part thereof shall be assessed against the property in the town outside of the village. Thereafter such portion of the cost thereof determined to be assessed outside of the village shall be a charge against that part of the town outside of the village and assessed, levied and collected from the taxable property of that part of the town outside of the village. When appointed, such police officers shall have all the powers and be subject to all the duties and liabilities of a police officer in all criminal actions and proceedings and special proceedings of a criminal nature.

2. The town board of a town in which such a police department has been established at any time by resolution may establish a board of police commissioners for such town and appoint one or three police commissioners who shall at the time of their appointment and throughout their term of office be electors of such town, and who shall serve without compensation, and at the pleasure of the town board. If the town board shall appoint only one such police commissioner, it shall in addition designate two members of the town board to serve as members of such police commission. The town board may also by resolution designate the supervisor to serve as police commissioner, and when so designated, such supervisor shall have all the powers of and perform the duties of such board of police commissioners. When either of such boards of police

commissioners shall have been established or supervisor designated as police commissioner, such board of police commissioners or police commissioner shall have and exercise all the powers relative to police matters conferred upon the town board pursuant to this article. The town board may by resolution at any time abolish such police commission or revoke the designation of such supervisor as police commissioner and thereupon the town board only shall exercise the powers conferred upon it by this article.

3. The town board of a town, upon establishing or abolishing a police department, shall notify the commissioner of the division of criminal justice services of such action within thirty days thereafter.

4. Any local law which seeks to abolish a town police department shall be subject to a permissive referendum as provided in article seven of this chapter.

§ 151. Qualifications. No person shall be eligible to appointment or reappointment to such police department, nor continue as a member thereof, who shall not be a citizen of the United States, who has been convicted of a felony, who shall be unable to read and write understandingly the English language or who shall not reside within the state of New York and in any town or village in the county in which such town is situated at the time of his or her appointment.

§ 152. Promotion. The town board may determine that promotions of officers and members of such police department shall be made by the town board on the basis of seniority, meritorious police service and superior capacity as shown by competitive examination, such examination to be conducted by the appropriate civil service commission. Individual acts of personal bravery may be treated as an element of meritorious service in such examination. The town board shall keep a complete service record of each member of such police department in accordance with the rules of the appropriate civil service commission and shall transmit the record of each candidate for promotion to such civil service commission in

advance of such examination.

§ 153. Transfers. Transfers from one town police department to another town or village police department in the same county may be made upon the mutual consent of the appointing officers of the departments affected. Any member of such police force who is or has been transferred shall receive credit with the department to which he is transferred for time served on the police force or in the department of any village or town within the same county, as though the full time had been served with the department to which he has been transferred, for purposes of seniority, promotion, pensions and general administration.

§ 154. Administration. The town board may make, adopt and enforce rules, orders and regulations for the government, discipline, administration and disposition of the police department and of the members thereof. Such rules and regulations and all amendments thereto shall be in writing and shall be posted in a conspicuous place in the police headquarters. Each member of the department shall receive a copy thereof and of all amendments thereto.

§ 154-a. Physical examinations. The town board may, from time to time, provide, by resolution, for the physical examination of any or all members of the police department by a duly qualified physician designated by the town board. The costs of such examinations shall be a town charge.

§ 155. Discipline and charges. Except as otherwise provided by law, a member of such police department shall continue in office unless suspended or dismissed in the manner hereinafter provided. The town board shall have the power and authority to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police department. Except as otherwise provided by law,

no member or members of such police department shall be fined, reprimanded, removed or dismissed until written charges shall have been examined, heard and investigated in such manner or by such procedure, practice, examination and investigation as the board, by rules and regulations from time to time, may prescribe. Such charges shall not be brought more than sixty days after the time when the facts upon which such charges are based are known to the town board. Any member of such police department at the time of the hearing or trial of such charges shall have the right to a public hearing and trial and to be represented by counsel; no person who shall have preferred such charges or any part of the same shall sit as judge upon such hearing or trial. Witnesses upon the trial of such charges shall testify thereto under oath. No member of such department who shall have been dismissed shall be reinstated unless he shall, within twelve months of his dismissal, file with such board a written application for a rehearing of the charges upon which he was dismissed. Such board shall have the power to rehear such charges and, in its discretion, may reinstate a member of the force after he has filed such written application therefor.

Any member of such department found guilty upon charges, after five days' notice and an opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or of violation of rules or regulations or disobedience, or of incompetency to perform official duty, or of an act of delinquency seriously affecting his general character or fitness for office, may be punished by the town board having jurisdiction, by reprimand, by forfeiture and withholding of salary or compensation for a specified time not exceeding twenty days, by extra tours or hours of duty during a specified period not exceeding twenty days, by suspension from duty for a specified time not exceeding twenty days and the withholding of salary or compensation during such suspension, or by dismissal from the department.

Notwithstanding chapters one hundred four and five hundred twenty-four of the laws of nineteen hundred thirty-six, such board shall have the power to suspend, without pay, pending the trial of charges, any member of such police department in accordance with subdivision three of section seventy-five of the civil service law. If any member of such police department so suspended shall not be convicted of the charges so

preferred, he shall be entitled to full pay from the date of suspension. The conviction of a member of such police department by the town board shall be subject to review by the supreme court in the judicial district in which such town is located in the manner provided by article seventy-eight of the civil practice law and rules, provided that the proceeding is commenced within thirty days from the determination of such conviction by the town board.

§ 156. Effect of resignation. Any member of such department who shall resign shall be eligible for reinstatement in the same police force or police department or in any other police force or police department to which he was eligible for transfer at the time of his resignation, provided such reinstatement occurs within one year of the date of resignation and further provided that such application for reinstatement shall be made in writing within such one year period.

§ 157. Absentee leave. Every member of such police department shall be entitled, in addition to any vacation or absentee leave now prescribed by law, to one day of rest in seven. The chief or acting chief of the police department shall keep a time book showing the name and shield number of each member of the department and the hours worked by each of such police officers in each day. The town board may make a variation from the above prescribed hours of vacation, provided the member shall receive during each year the actual number of days absentee leave to which he or she is entitled. The town board, at its option, may, in addition to the days of rest hereinbefore provided, grant an annual vacation with pay. Whenever the town board shall designate any police officer to attend police school, such attendance shall be deemed in the course of duty and when so attending he or she shall receive his or her usual pay and reimbursement for actual and necessary expenses. Sick leave with full pay may be granted whenever such sickness or disability has been incurred without the delinquency of the police officer.

§ 158. Special police officers. 1. The town board of any town of the

first class and the town board of any town of the second class which shall have a population of five thousand or more as shown by the latest federal census, whether there be a police department in and for such town or not, may employ temporary police officers from time to time as the town board may determine their services necessary. Such police officers shall be known as "special police officers" and shall have all the power and authority conferred upon constables by the general laws of the state and such additional powers, not inconsistent with law, as shall be conferred upon them by the town board. They shall be subject to the general authority and direction of the town board and to such orders and regulations as the town board may prescribe, not inconsistent with law. Such special police officers shall serve at the pleasure of the town board and the town board shall fix their compensation and may purchase uniforms and equipment therefor but no such special police officers shall be appointed nor any expense incurred by reason thereof unless said town board shall have provided therefor in its annual budget, previously adopted, and no expenditure shall be made in excess of the budget appropriation therefor. Such special police shall be appointed in accordance with the civil service law and rules. Provided, however, and notwithstanding the foregoing provisions of this section, the town board of any such town may, when in their judgment necessary for the preservation of the public peace during any emergency period of sixty days or less, appoint and at pleasure remove within such period additional special police officers not exceeding five in number, without examination, and fix their compensation which shall be a town charge and be paid from moneys available for expenditure for general town purposes.

2. The town board of a town of the second class which shall have a population of less than five thousand as shown by the latest federal census, may adopt a resolution, subject to a permissive referendum, determining to employ one or more temporary police officers, provided that such town has a population of one thousand or more according to the latest federal census or that such town adjoins a city. Towns having a population in excess of one thousand may employ one additional temporary police officer for each one thousand population in excess of the first one thousand but the total number of police officers so employed shall not exceed five. Such police officers shall be known as "special police

officers" and shall have all the power and authority conferred upon constables by the general laws of the state and such additional powers, not inconsistent with law, as shall be conferred upon them by the town board. They shall be subject to the general authority and direction of the town board and to such orders and regulations as the town board may prescribe, not inconsistent with law. Such special police officers shall serve at the pleasure of the town board and the town board shall fix their compensation and may purchase uniforms and equipment therefor. The compensation of such officer or officers, and the expense of the uniforms and equipment therefor if purchased by the town board, shall be a town charge and the amount thereof shall be assessed and levied upon the taxable property of the town and collected in the same manner as other town charges are assessed, levied and collected.

Notwithstanding such limitations upon their number, any such town may employ not more than five temporary police officers for a period of not to exceed three days in any calendar week.

ARTICLE 11

FIRE, FIRE ALARM AND FIRE PROTECTION DISTRICTS

Section 170. Establishment and extension of fire, fire alarm and fire protection districts.

171. Petition and hearing.

172-a. Alteration of boundaries of fire districts.

172-c. Alteration of boundaries of fire protection district.

172-e. Change of name of fire district.

172-f. Resolution and hearing for diminution of fire district boundaries.

172-g. Filing of determination.

173. Filing of determination.

174. Fire district officers.

175. Election of fire district officers.

175-a. Registration for voters.

175-b. Absentee ballots for fire district elections; special provisions.

175-c. Notice of hearings and elections.

- 176. Powers and duties of fire district commissioners.
- 176-a. Duties of chief and assistant chiefs of fire department of fire district.
- 176-b. Volunteer members of fire district fire companies.
- 176-c. Removal of fire commissioners.
- 176-d. Funding of fire districts.
- 176-e. Training requirements for fire commissioners.
- 177. Powers and duties of fire district treasurer.
- 177-b. Powers and duties of deputy fire district treasurers.
- 177-c. Powers and duties of the director of purchasing.
- 178. Powers and duties of fire district secretary.
- 178-a. Expenses incurred in attending town and county officers training school.
- 178-b. Expenses of the association of fire districts of the state of New York.
- 178-c. Expenses of fire district officers, officials and employees.
- 178-d. Costs, expenses and damages a fire district charge in certain cases.
- 179. Special district elections to vote upon appropriations.
- 180. Actions and proceedings against fire districts.
- 181. Annual budget and levy of taxes.
- 181-a. Budgetary controls.
- 181-b. Independent audit of fire districts.
- 182. Effect of incorporation of village or city including lands within a fire district.
- 183. Fire alarm districts.
- 184. Fire protection districts.
- 184-a. Contract for water supply outside of fire districts.
- 184-c. Water supply outside of fire districts.
- 186. Savings clause.
- 187. Exclusion of a fire district from a water supply district.
- 188. Use of surplus town moneys for purchase of fire apparatus for use in town fire districts.
- 189. Fire inspection of property in contract areas.

§ 170. Establishment and extension of fire, fire alarm and fire protection districts. 1. The town board of any town or, if the proposed district or extension includes territory in more than one town, the town boards of each of the towns in which such proposed district or extension is situated, acting jointly by a majority vote of the members of each of such town boards, upon a written petition as hereinafter provided, may establish or extend fire districts, fire alarm districts and fire protection districts in said town or towns; provided, however, that any such district or extension shall be outside of any incorporated village or city, or existing fire, fire alarm or fire protection district. A fire district shall not be extended pursuant to the provisions of this subdivision except upon the consent in writing of a majority of the commissioners of such fire district. Such consent shall be acknowledged or proved in the same manner as a deed to be recorded.

2. Upon its own motion and without a petition, the town board of any town or, if the district as proposed or proposed to be extended includes territory in more than one town, the town boards of each of the towns acting jointly by a majority vote of the members of each of such boards may establish or extend fire districts or fire protection districts in such town or towns outside of any incorporated village or city or existing fire, fire alarm or fire protection district therein, after a public hearing thereon. The notice of such hearing shall be published and posted and such hearing shall be held in the manner provided in this article for a hearing upon the establishment of a fire district or fire protection district upon petition. After such hearing and upon the evidence given thereat, the town board or boards shall determine by resolution whether it be in the public interest to establish the proposed fire district or fire protection district or extend the existing fire district or fire protection district, as the case may be. If it be determined that the establishment or extension of such district be in the public interest, the town board or boards shall determine whether all the property, property owners and interested persons within the proposed district are benefited thereby and whether all property or property owners benefited are included therein and such town board or boards shall so alter the boundaries of the proposed district or

extension, so that all property and property owners and only such property and property owners as are benefited shall be included within its limits. In the event, however, that it is found that any property, property owners or any interested persons not included in the district, as originally proposed, will be benefited thereby, a further notice shall be posted and published and another hearing held as provided herein, unless all said additional property owners or interested persons execute and file written consents to be included in such district or extension. When the boundaries of such fire protection district or extension shall have been finally determined, the town board or boards shall adopt a resolution establishing or extending the district and shall comply with the provisions of subdivision one of section one hundred seventy-three of this chapter. When the boundaries of such fire district or extension shall have been finally determined the town board or boards shall adopt a resolution approving the establishment or extension of the district, and shall comply with the provisions of subdivisions two and four of section one hundred seventy-three of this chapter, other than filing a certified copy of a petition as provided in such subdivision two. A fire district shall not be extended pursuant to the provisions of this subdivision except upon the consent in writing of a majority of the commissioners of such fire district. Such consent shall be acknowledged or proved in the same manner as a deed to be recorded.

3. If a fire alarm district or fire protection district is proposed to be established, or extended, and the district or extension will be situated in whole or in part in any town which is wholly or partly within the Adirondack park and has within the town boundaries state lands subject to taxation assessed at more than thirty per centum of the total taxable assessed valuation of the town as determined from the assessment rolls of the town, as completed from time to time, the town board or boards shall not adopt a resolution establishing or extending any such fire alarm district or fire protection district unless the state comptroller, on behalf of the state, previously has consented to the establishment or extension of the district.

4. Notwithstanding the provisions of subdivision one of this section,

and subdivisions one and two of section one hundred seventy-one of this chapter, if a fire district embraces an area outside a village and also embraces more than fifty per centum of the area of such village, and if the village was incorporated after the fire district was established, the town board of the town in which such fire district and such village are situated, after a public hearing and upon the petition of the village board of such village and the board of fire commissioners of such fire district, may adopt a resolution, subject to permissive referendum, extending such fire district to include the portion of such village which is not in such fire district. The notice of public hearing shall be posted and published, and such hearing shall be held in the manner provided in this article for a hearing upon the establishment or extension of a fire district. The provisions of sections ninety and ninety-one of this chapter shall apply in relation to such referendum except that a petition filed pursuant to such section ninety-one only need be signed by twenty-five qualified electors of the area of such extension, or if there are not twenty-five electors, then by at least fifty per centum of the qualified electors of such area. All of the other provisions of this article not inconsistent herewith shall be complied with in relation to any such extension.

§ 171. Petition and hearing. 1. A petition to establish or extend a fire, fire alarm or fire protection district pursuant to the provisions of section one hundred seventy of this article shall be 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 resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the proposed district or extension thereof owned by resident taxpayers, as such valuations appear upon the latest completed assessment roll of said town or towns, except that where there are no resident taxpayers within a proposed fire protection district or fire alarm district or a proposed extension of a fire district, fire protection district or fire alarm district then the petition shall be signed by non-resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all

the taxable real property in the proposed district or extension as shown on such last completed assessment roll. If a portion only of a parcel of such real estate appearing upon the assessment roll is situated within the proposed district or extension, then the town board or boards may determine the relative value of that part thereof within the proposed district or extension, based upon the valuation of the entire parcel as the same appears upon the assessment roll. If the boundaries of a proposed fire district as described in the petition therefor shall be coterminous with those of an existing water supply district having no bonded indebtedness, the petition may provide for the dissolution of such water supply district upon the establishment of said fire district and the assumption by said fire district of all the liabilities and indebtedness of such water supply district.

2. a. The town board or town boards shall hold a public hearing upon such petition and shall cause a notice thereof to be published at least once in a newspaper having general circulation in the territory affected, the first publication thereof to be not less than ten days nor more than twenty days before the day designated therein for the hearing, and the town clerk or town clerks shall cause copies of such notice to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter, and conspicuously in such other places within or without the territory affected as the town board or town boards may direct, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. In the event that the town maintains a website, such information may also be provided on the website. Such notice shall contain a description of the proposed district or extension, state the estimated rate per thousand dollars of assessed valuation, based on the aggregate assessed valuation of taxable real property of the proposed district or extension district shown in the latest completed final assessment roll, projected to be assessed, levied and collected for purposes of the proposed district or extended district for the fiscal year of its operation and specify the time when and the place where the town board or boards will meet to consider such petition and to hear all persons interested in the subject concerning the same. If the petition shall provide for the dissolution of an existing water supply district upon the establishment of the fire

district, the notice of hearing shall so specify. If, upon the establishment or extension of a fire district, the fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the notice of hearing shall so specify and contain a statement of the estimated annual cost of the service award program to the fire district; provided, however, that if, upon the establishment or extension of a fire district, the ensuing fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the resolutions establishing the districts shall be submitted in each such town in the manner provided by article seven of this chapter. Prior to the publication of the notice, the board or boards shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated rate of assessment for the proposed district or extended district was computed.

b. (1) If the permission of the state comptroller is not required pursuant to section one hundred seventy-three of this article because it is not proposed to finance an expenditure for the district or extension by the issuance of bonds, notes, certificates or other evidences of indebtedness of the fire district, a certified copy of the notice shall be filed with the state comptroller on or about the date of the publication of such notice.

(2) Notwithstanding the provisions of subparagraph one of this paragraph the state comptroller shall not be precluded from requiring the submission of additional information or data in such form and detail as the state comptroller shall deem sufficient or from causing an investigation to be made with respect to the establishment or extension of a district or an increase in the maximum amount to be expended.

3. After a hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the town board or boards shall determine by resolution:

(a) Whether the petition is signed, and acknowledged or proved, or authenticated as required by law and is otherwise sufficient;

(b) Whether all the property and property owners within the proposed district or extension are benefited thereby;

(c) Whether all the property and property owners benefited are included within the limits of the proposed district or extension;

(d) Whether it is in the public interest to grant in whole or in part the relief sought.

If the town board shall determine that the petition is not signed, and acknowledged or proved, or authenticated as required by law or that it is otherwise insufficient, or if it is determined that it be not in the public interest to grant in whole or in part the relief sought, the town board shall deny the petition.

If the town board shall determine that the petition is signed, and acknowledged or proved, or authenticated as required by law and is otherwise sufficient and that it is in the public interest to grant the relief sought, either in whole or in part, but shall find that any part or portion of the property or property owners within the proposed district or extension are not benefited thereby or that certain property or property owners benefited thereby have not been included therein, the town board shall specify the necessary changes of the boundaries of the proposed district or extension to be made in order that all of the property and property owners and only such property and property owners as are benefited shall be included within such proposed district or extension, and the board shall call a further hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. Notice of such further hearing shall be posted, published and mailed in the manner provided in this section except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed district or extension. Such further hearing shall be conducted in the same manner as an original hearing upon a petition. If and when the town board shall determine in the affirmative all of the questions set forth in this subdivision, the board may adopt a resolution approving the establishment or extension of the district as the boundaries shall be finally determined, but no such resolution so approving shall be adopted unless the petition shall comply with the requirements of this section as to sufficiency of signers as the boundaries of the proposed district or extension shall be finally determined.

§ 172-a. Alteration of boundaries of fire districts. 1. Irrespective of the manner of their original establishment, whenever two or more fire districts adjoin and the boards of fire commissioners of each fire district affected have agreed by a written memorandum of proposed change to alter the boundaries of such fire districts, but not in such a manner as to include territory not previously situate within such fire districts, nor to exclude territory previously situate therein, and after a public hearing thereon, held jointly by such fire districts, the boundaries of such fire districts may be altered in accordance with such memorandum of proposed change, but not until such proposed change has been approved by the town board of the town in which such fire districts are located, or if located in two or more towns, by the town boards of such towns.

2. Such memorandum of proposed change shall be signed by a majority of the members of the board of fire commissioners of each fire district and shall be acknowledged or proved in the same manner as a deed to be recorded. The members of the board of fire commissioners of each district affected shall jointly hold a public hearing upon such memorandum of proposed change and shall cause a notice thereof to be published at least once in a newspaper having general circulation in the territory affected, the first publication thereof to be not less than ten days nor more than twenty days before the day designated therein for the hearing, and the secretary of the fire districts shall cause copies of such notice to be posted conspicuously in five public places in the district at least ten days prior to the date of such public hearing. In the event that the district maintains a website, one of the posting requirements may be fulfilled by posting such information on the website. Such notice shall specify the time when and the place where the boards of fire commissioners of the districts affected will meet to hear all persons interested in the subject concerning the same and shall specify each district affected and shall state in general terms the manner in which it is proposed to alter the boundaries thereof. Costs of publication shall be borne equally by each fire district affected.

3. After a hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the boards of fire commissioners of the districts affected shall determine by joint resolution:

(a) Whether all the property and property owners within the districts are benefited by such change.

(b) Whether all the property and property owners within the area of such boundary change are benefited thereby.

(c) Whether it is in the public interest to grant the boundary line changes as set forth in the memorandum of proposed change.

If and when the boards of fire commissioners shall determine in the affirmative all of the questions set forth in this subdivision, the boards may adopt a resolution jointly approving the boundary line changes. Such joint resolution and memorandum of proposed change shall be filed with the town clerk of the town or towns in which such districts are wholly located and with the assessor of such town or towns.

4. The proposed change of boundaries shall be deemed to have been approved pursuant to this section in the event that no action is taken by the town board or town boards, either approving or disapproving, within thirty days of receipt of the memorandum of proposed change by the town clerk or clerks. If the town board or town boards approve such proposed change, such alteration of boundaries shall be deemed effective upon the date of such adoption. If the town board of any one of the two or more town boards in which the fire district is located disapprove such proposed change of boundaries, then, within ten days after the adoption of such resolution disapproving such change of boundaries the town clerk of the town disapproving such change shall notify the fire districts involved. Any fire district believing itself aggrieved may within thirty days of receipt of notification commence an appropriate proceeding in the supreme court of the state of New York in accordance with article seventy-eight of the civil practice law and rules, naming the town board or town boards as respondents.

5. In the event that the boundaries of a district having indebtedness, either bonded or temporary, shall be altered pursuant hereto, such

district shall continue in law as it existed immediately prior to such change of boundaries for the purpose of paying such indebtedness, and there shall be annually assessed and levied upon and collected from the taxable real property within such district as it existed immediately prior to such alteration of boundaries, in the same manner and at the same time and by the same officers as town taxes are assessed, levied and collected, a sum sufficient to pay such indebtedness and interest thereon as the same shall become due. All and only the real property within the boundaries of the district as they exist after the alteration thereof shall be liable for the payment of indebtedness incurred for the purposes of such district after such alteration. For the purposes hereof, such alteration of boundaries shall be deemed effective upon the adoption by the boards of fire commissioners of the affected fire districts of the resolution providing therefor, unless such resolution shall specify some other date for such purpose, in which case such alteration shall be deemed effective upon the date so specified.

§ 172-c. Alteration of boundaries of fire protection district. The town board of a town in which any fire protection district has been established, or if established in two or more towns, the town boards of such towns acting jointly by a majority vote of the members of each of such town boards, upon petition and after a public hearing, or upon the motion of such town board or town boards after a public hearing, may alter the boundaries of such fire protection district in accordance with such petition or motion and exclude from the district territory previously located therein. Such petition, if any, shall be signed by resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property owned by resident taxpayers in the territory to be excluded and at least one-half of the assessed valuation of all the taxable real property owned by resident taxpayers in the remaining territory of the district. The assessed valuations in either case shall be the assessed valuations of the taxable real property as shown by the latest completed assessment-roll of the town. Such petition, if any, shall be 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. Notice of such hearing shall be given and such hearing held and the subject matter thereof determined in the manner provided herein for hearings upon the establishment of fire protection districts, except that the notice of hearing shall state in general terms the purposes of the hearing and the manner in which it is proposed to alter the boundaries of the district. Any resolution altering the boundaries of such fire protection district made upon motion of the town board or town boards without a petition shall be subject to a permissive referendum as provided in article seven of this chapter. For the purposes of this section, the boundaries of such fire protection district shall be deemed to be altered pursuant to petition of resident taxpayers and the territory described in the notice excluded, upon the adoption by the town board or town boards of the resolution providing therefor, unless such resolution shall specify some other date for such purpose, in which case such boundaries shall be deemed to be altered and such territory excluded on the date so specified, and such alteration of boundaries upon motion of the town board or town boards without a petition shall become effective as provided in section ninety-one of this chapter. Unless renegotiated, any existing contract for the supplying of fire protection to any such fire protection district shall be carried out in the same manner as if such boundaries had not been altered or territory excluded from the district.

§ 172-e. Change of name of fire district. The name of a fire district may be changed upon a resolution of the board of fire commissioners of such fire district after a public hearing thereon. Such public hearing shall be held prior to the first day of September in any year. The notice of such hearing shall state the proposed new name and shall be published and posted, and such hearing shall be held, in the manner provided in this article for a hearing upon the establishment of a fire district upon petition. After such hearing and upon the evidence given thereat, the board of fire commissioners shall determine by resolution whether it be in the public interest to change the name of such fire district. If it be so determined, the board of fire commissioners, by an approving vote of not less than three-fifths of the voting strength of

the board, shall adopt a resolution establishing the new name for the fire district to take effect on the first day of January of the next fiscal year of the fire district. Within ten days after the passage of such resolution, the fire district secretary shall file a certified copy of such resolution (1) in the office of the town clerk of each town in which such district is situated, (2) in the office of the county clerk of each county in which such district is situated, (3) in the office of the clerk of the board of supervisors of each county in which such district is situated, and (4) in the office of the state department of audit and control at Albany, New York.

§ 172-f. Resolution and hearing for diminution of fire district boundaries. 1. Irrespective of the manner of its original establishment, whenever a board of fire commissioners resolves, by a two-thirds vote, to diminish the boundaries of such fire district, so as to exclude territory previously situate within such fire district, and after a public hearing thereon, held jointly by the fire district and the town in which such territory to be excluded is situate, the boundaries of such fire district may be altered in accordance with such resolution.

2. Such resolution of proposed diminution shall be signed by two-thirds of the members of the board of fire commissioners and shall be acknowledged or approved in the same manner as a deed to be recorded. The members of the board of fire commissioners shall jointly hold a public hearing with the members of the town board in which such territory is located and shall cause a notice thereof to be published at least once in a newspaper having general circulation in the territory affected. The first publication thereof shall be not less than ten days nor more than twenty days before the day designated therein for the hearing. Such notice shall specify the time when and the place where the board of fire commissioners and the town board will meet to hear all persons interested in the subject, and shall specify the territory affected. Cost of publication shall be borne solely by the fire district. Such notice shall also specify the area to be included in a proposed fire protection district, which fire protection district shall include the area of the fire district proposed to be excluded.

3. After a hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the board of fire commissioners and the town board shall determine by resolution: (a) Whether all the property and property owners within the area proposed to be excluded from the district and included in the fire protection district are benefited thereby;

(b) Whether all the property and property owners benefited are included within the limits of the proposed fire protection district;

(c) Whether it is in the public interest to grant in whole or in part the diminution of the district and the creation of the fire protection district by the town board.

If the board of fire commissioners and the town board shall determine that it is in the public interest to diminish the fire district and create the fire protection district but shall find that any part or portion of the property or property owners within the proposed area to be excluded from the fire district are not benefited thereby or that certain property or property owners benefited thereby have not been included in the proposed fire protection district, the board of fire commissioners and the town board shall specify the necessary changes of the boundaries of the area to be excluded from the fire district and the boundaries of the fire protection district in order that only such property and property owners as are benefited, shall be included within such proposed excluded area and within the fire protection district, and the board of fire commissioners shall, together with the town board, call a further hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. Notice of such further hearing shall be published in the manner provided in this section except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the area to be excluded and the boundaries of the fire protection district. Such further hearing shall be conducted in the same manner as the original hearing. If, and when, the board of fire commissioners and the town board shall determine in the affirmative all of the questions set forth in this subdivision, the board of fire commissioners may adopt a resolution approving the diminution of the fire district and the town board may adopt a

resolution approving the establishment of the fire protection district, all as the boundaries shall be finally determined.

§ 172-g. Filing of determination. 1. Whenever the board of fire commissioners and the town board shall adopt a resolution diminishing the area of a fire district and including such area in a fire protection district, the town clerk shall cause a certified copy of such resolution to be duly recorded in the office of the clerk of the county in which such fire district and fire protection district are located, and shall, within ten days cause a certified copy of such resolution to be filed in the state department of audit and control at Albany, New York. When so recorded, such resolution shall be presumptive evidence of the regularity of the establishment of the fire protection district and the diminution of the fire district. The expense of such recording shall be a charge against the fire district. The said determination shall be final and conclusive unless a proceeding has been commenced for a review in the manner provided by article seventy-eight of the civil practice law and rules within thirty days from the time of recording thereof.

2. In the event that the boundaries of a fire district having indebtedness, either bonded or temporary, shall be diminished pursuant hereto, such district shall continue in law as it existed immediately prior to such change of boundaries for the purpose of paying such indebtedness, and there shall be annually assessed and levied upon and collected from the taxable real property within such district as it existed immediately prior to such diminution of its boundaries, and in the same manner and at the time and by the same officers as town taxes are assessed, levied and collected, a sum sufficient to pay such indebtedness and interest thereon as the same shall become due. All and only the real property within the diminished boundaries of the district as they exist after the diminution thereof shall be liable for the payment of indebtedness incurred for the purposes of such district after such diminution. For the purposes hereof, such diminution of boundaries shall be deemed effective upon the adoption by the town board of the resolution providing therefor, unless such resolution shall specify some other date for such purpose, in which case such diminution shall be

deemed effective upon the date so specified.

§ 173. Filing of determination. 1. Whenever the town board or boards shall adopt a resolution establishing or extending a fire alarm district or a fire protection district, or consolidating two or more adjoining fire districts or fire protection districts, or altering the boundaries of a fire district or fire protection district, or dissolving a fire district, a fire alarm district or fire protection district, the town clerk or clerks shall cause a certified copy of such resolution to be duly recorded in the office of the clerk of the county or counties in which such fire district, fire alarm district, fire protection district, or consolidated or altered fire districts, or consolidated fire protection districts, are located, and shall, within ten days cause a certified copy of such resolution to be filed in the state department of audit and control at Albany, New York. When so recorded, such resolution shall be presumptive evidence of the regularity of the establishment, extension, consolidation, dissolution or alteration of such district or districts. The expense of such recording shall be a charge against the district or districts. The said determination shall be final and conclusive unless a proceeding has been commenced for review in the manner provided by article seventy-eight of the civil practice law and rules within thirty days from the time of recording thereof.

2. Whenever the town board or boards shall adopt a resolution establishing or extending a fire district for which it is proposed that an expenditure is to be financed by the issuance of bonds, notes, certificates or other evidences of indebtedness of the fire district, such resolution or determination shall be submitted to the state comptroller for approval in the following manner:

(a) Within ten days after the adoption of a resolution by a town board approving the establishment or extension of such a district, the town clerk of the town shall file a certified copy of such resolution, in duplicate, in the office of the state department of audit and control at Albany, New York, together with an application, in duplicate, for permission to create or extend such district as the case may be. Such application shall be executed and verified by the supervisor, or by such

other officer of the town as the town board shall determine, and shall include the following:

(1) A certified copy of the petition, if there is one, omitting, however, the signatures and acknowledgments or proofs, or authentications.

(2) An itemized statement of the existing indebtedness of the town, both temporary and bonded, including the indebtedness of the town for all special district purposes.

(3) A statement of the aggregate assessed valuation of the taxable real property situated in the proposed district or extension thereof, and, if there is a petition, of the portion thereof owned by resident owners.

(b) Whenever such an application shall be filed in the office of the department of audit and control, the state comptroller shall within five days thereafter give notice thereof to the board of supervisors of the county in which such proposed district or extension is located by filing with the clerk of such board of supervisors one copy of such application. At any time within fifteen days of the filing of the application, said board of supervisors may file an objection, in writing, in the office of said department of audit and control. In addition, the state comptroller shall determine whether the public interest will be served by the creation or extension of the district and also whether the cost thereof will be an undue burden upon the property of the proposed district or extension. 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.

3. Upon the expiration of fifteen days from the date of the filing of such application with the clerk of the board of supervisors and upon reaching a determination, the comptroller shall make an order, in duplicate, granting or denying permission for the creation or extension of the district 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

district or extension is located. The town clerk shall present such order to the town board of the town at the next meeting thereof.

4. If the state comptroller shall deny permission for the creation or extension of the district, the town board shall forthwith adopt an order denying the petition. If the state comptroller shall grant permission therefor or if permission of the state comptroller is not required, the town board may adopt an order establishing the district or extension as the boundaries shall be finally determined. The town clerk shall cause certified copies of its resolution and such order to be duly recorded in the office of the clerk of the county or counties in which such fire district is located. When so recorded such resolution and order shall be presumptive evidence of the regularity of the establishment or extension of such district. The expense of such recording shall be a charge against the district. The said determination shall be final and conclusive unless a proceeding for review in the manner provided by article seventy-eight of the civil practice law and rules has been commenced within thirty days from the time of the recording thereof. Within ten days after the adoption of such order by the town board, establishing the district or extension, the town clerk shall cause a certified copy of such order to be filed in the office of the state department of audit and control at Albany, New York.

5. If the petition for the establishment of a fire district shall provide for the dissolution of an existing coterminous water supply district having no bonded indebtedness, then upon the establishment of the fire district the district so established shall assume and pay all the liabilities and indebtedness of the water supply district so dissolved.

§ 174. Fire district officers. 1. Whenever a fire district shall be established, within ten days thereafter the town board of the town in which such district is located or, in the case of a district including territory in two or more towns, the town boards of such towns acting jointly by a majority vote of the members of each of such town boards, shall appoint five fire district commissioners and a treasurer for such

district who shall hold their respective offices until the thirty-first day of December next succeeding; provided, however, that if such district be established subsequent to the first day of October in any year, the officers so appointed by the town board shall hold office until the thirty-first day of December of the next succeeding calendar year. A person so appointed as fire district commissioner shall not serve as chief or assistant chief of the fire district fire department after taking his oath of office as such commissioner and during the time he serves as such commissioner pursuant to such appointment. The town clerk shall immediately notify the appointees of their appointment and of the time and place which he shall fix for the organization meeting of the board of fire commissioners, which meeting shall be held not later than ten days after the appointment of said officers. At such organization meeting, the treasurer shall preside until such time as a chairman of the board of fire commissioners shall be chosen, but such treasurer shall not be entitled to a vote at such meeting. The board of fire commissioners shall appoint a secretary who shall hold office until the thirty-first day of December following the first election of fire district officers.

2. The first election of fire district officers shall be held on the second Tuesday in December next succeeding the establishment or consolidation of such fire district; provided, however, that if such district be established at a time subsequent to the first day of October in any year, the first election of fire district officers shall be held on the second Tuesday in the month of December of the next succeeding calendar year. At the first annual election of fire district officers, five district commissioners shall be elected and a treasurer. Every registered fire district voter shall be entitled to cast one vote for each vacant position on a board of fire commissioners to be filled in the first annual election of fire district officers. The person receiving the greatest number of votes for the office of fire commissioner shall be elected for a term of five years; the person receiving the second highest number of votes shall be elected for a term of four years; the person receiving the third highest number of votes shall be elected for a term of three years; the person receiving the fourth highest number of votes shall be elected for a term of two years

and the person receiving the fifth highest number of votes shall be elected for a term of one year. In the event that two persons shall receive the same number of votes the terms of office shall be decided by lot. At each subsequent election of fire district officers a commissioner shall be elected for the full term of five years. In the event that two or more persons receive the same number of votes thereat, a special election between the tying parties receiving the highest number of votes to fill the vacancy shall be held within forty-five days after such election. The fire district treasurer shall be elected for a term of three years. The fire district secretary shall be appointed by the fire district commissioners and shall serve for a period of one year. The fire district secretary in office at the time such election is held shall immediately notify the officers elected of their election and that an organization meeting will be held on the day specified in said notice, which shall not be later than the fifteenth day of January next ensuing. At such organization meeting, the treasurer shall preside until such time as a chairperson of the board of fire commissioners shall be chosen, but such treasurer shall not be entitled to a vote at such meeting.

2-a. The fire district commissioners may adopt a resolution establishing the office of director of purchasing and appoint a director of purchasing who shall serve for a term, not to exceed five years, to be fixed by the fire district commissioners. If the fire district commissioners so determine, the duties of the director of purchasing may be combined with the duties of any other fire district officer or employee except members of the board of fire district commissioners and the fire district treasurer. The fire commissioners of any fire district in which the office of director of purchasing shall have been established may adopt a resolution abolishing such office, and upon the expiration of the term of office of the incumbent or such other time as may be set forth in the resolution, such office shall be abolished and no successor shall be appointed.

3. The fire district commissioners shall receive no compensation for their services, but a commissioner acting as secretary of the fire district may be compensated. The fire district secretary shall receive

such compensation as the fire district commissioners may determine, but if the secretary be a member of the board of fire commissioners his compensation shall be fixed by the other members of the board. The fire district treasurer and the director of purchasing, when such office has been established, shall receive such compensation as the fire district commissioners may determine. Each fire district treasurer, each secretary in fire districts having a separate secretary, and each director of purchasing, when such office has been established, shall before entering upon the duties of his office take the constitutional oath of office and file the same with the town clerk of the town or one of the towns in which such fire district is located. The treasurer of each fire district shall before entering upon the duties of his office, execute and file with the town clerk of the town or one of the towns in which such fire district is located, an official undertaking, conditioned for the faithful performance of his duties and that he will and truly keep, pay over and account for all moneys of the fire district coming into his hands as treasurer of the fire district. The undertaking shall be in such form, in such sum and with such sureties as the fire commissioners shall direct and approve and such approval shall be indicated upon such undertaking. The fire commissioners of any fire district may require the director of purchasing, when such office has been established, before entering upon the duties of that office, to execute and file with the town clerk of the town or one of the towns in which such fire district is located, an undertaking, conditioned for the faithful performance of his duties and for a due accounting of all property that may come under his care, custody and control. Such undertaking shall be in such form, in such sum and with such sureties as the fire commissioners shall direct and approve and such approval shall be indicated upon such undertaking.

4. The fire district treasurer or any commissioner of the fire district, whenever so appointed, may also act as fire district secretary. When the position of fire district treasurer or fire district secretary is appointive, and in the case of the director of purchasing, when such office has been established, and if no qualified resident of the district is willing to perform the duties of fire district treasurer, fire district secretary or director of purchasing, a person

who is a nonresident of such fire district may be appointed as fire district treasurer, fire district secretary or director of purchasing. A person shall not hold the offices of fire district commissioner and fire district treasurer at the same time. A person shall not hold the office of fire district commissioner and the office of chief or assistant chief of the fire department of the fire district at the same time.

Notwithstanding any inconsistent provision of law, a person who is a fire district commissioner, may, if he is otherwise qualified, be a candidate for nomination, and may be nominated by the fire district fire department, for the office of chief or any assistant chief of the fire department, but only if such commissioner has filed with the fire district secretary at least five days, but not more than ten days, before the meeting of the fire department at which any such nomination would be made a written notice that he will be a candidate for such nomination. If a fire district commissioner is a candidate for nomination for any such office in the fire department and he is duly nominated for such office at a meeting of the fire department, he shall forthwith cease to be a fire district commissioner and his office as such commissioner shall thereupon become vacant. If a fire district commissioner is a candidate for nomination for any such office in the fire department and he is defeated for such nomination at the meeting of the fire department, he shall not participate in any vote of the board of fire commissioners in relation to the appointment of the successful nominee to the office for which such commissioner and such successful nominee were opposing candidates.

Notwithstanding any inconsistent provision of law, a person who is the chief or an assistant chief of the fire district fire department, if he is otherwise qualified, may be elected to the office of fire district commissioner or may be appointed to the office of fire district commissioner to fill a vacancy and, if he is so elected or appointed, his office as chief or assistant chief, as the case maybe, shall become vacant upon his taking his oath of office as fire district commissioner.

5. A person who has been convicted of arson in any degree shall not be eligible for nomination, election or appointment to the office of fire

district commissioner or fire district officer.

6. Each commissioner of a fire district before entering upon the duties of his office, shall take the constitutional oath of office and file the same with the town clerk of the town or one of the towns in which such fire district is located.

7. A fire district is a political subdivision of the state and a district corporation within the meaning of section three of the general corporation law. The officers and employees of a fire district, including the paid and volunteer members of the fire department thereof, are officers and employees of such fire district and are not officers or employees of any other political subdivision.

§ 175. Election of fire district officers. 1. An annual election shall be held in each fire district on the second Tuesday in December, except that in the Ocean Bay Park fire district, the Lonelyville fire district, the Davis Park fire district, the Cherry Grove fire district, the Fair Harbor fire district and the Fire Island Pines fire district, Suffolk county, such annual election shall be held on the second Tuesday in July, except that in the town of Salisbury, Herkimer county, such annual election shall be held on the Tuesday next succeeding the first Monday in November from six o'clock in the morning until nine o'clock in the evening and except that in the Belfast fire district, Allegany county, such annual election shall be held on the first Tuesday in December. The board of fire commissioners shall give notice thereof by the publication of a notice once in one or more newspapers having a general circulation in the district. The first publication of such notice shall be not less than twenty-seven days and not more than thirty-four days prior to the date of such election. Such notice shall specify the time when and the place where such election will be held, the officers to be elected thereat and their terms of office, and the hours during which the polls will be open for the receipt of ballots. The secretary of such fire district shall prepare the ballots for all elections of fire district officers and the polls shall remain open for the receipt thereof at all elections of fire district officers from six o'clock in the evening

until nine o'clock in the evening and such additional consecutive hours prior thereto as the board of fire commissioners of such district may have determined and specified in the notice thereof. The board of fire commissioners shall designate a resident fire district elector, who shall be a registered voter of the town, to act as chairman of any election of said district and shall designate not less than two nor more than four resident fire district electors, who shall be registered voters of the town to act as election inspectors and ballot clerks at such elections. No elective officer of the fire district shall serve as such chairman or as an election inspector or ballot clerk. The board of fire commissioners may adopt a resolution providing that such chairman, election inspectors and ballot clerks shall be paid for their respective services at any such annual election or at any special election of the fire district. Such resolution, if adopted, shall fix the amount of such compensation, as follows: if the hours during which the polls will be open for the receipt of ballots are from six o'clock in the evening until nine o'clock in the evening, a sum not to exceed seventy dollars for each such official; if additional consecutive hours prior to six o'clock in the evening are determined and specified in the notice of election, a sum not to exceed one hundred dollars for each such official.

2. Every elector of the town who shall be a registered voter and who shall have resided in the district for the period of thirty days next preceding any election of fire district officers shall be qualified to vote for such officers. Every elector of the town who shall be a registered voter and who shall have resided in the fire district for the period of thirty days next preceding any election at which a proposition shall be submitted, shall be qualified to vote upon such proposition.

3. Every fire district commissioner, treasurer and secretary must at the time of his election or appointment and throughout his term of office be a resident of such fire district. Membership in a volunteer fire company shall not disqualify any such fire district commissioner, treasurer or secretary. A person who has been convicted of arson in any degree shall not be eligible for election or appointment to the office of fire district commissioner, treasurer or secretary. Any fire district

commissioner, treasurer or secretary who is convicted of arson in any degree during his term of office shall be disqualified from completing such term of office.

4. There shall be conspicuously placed, by the resident fire elector, distance markers at a distance of one hundred feet from the polling place. Such distance markers shall be so placed at least one-half hour before the opening of the polls and shall remain until such polls are closed. The one hundred foot distance shall be deemed to include a one hundred foot radial measured from the entrances, designated by the resident fire elector, to a building where such election is being held. While the polls are open no person shall do any electioneering within the polling place, or in any public street within the one hundred foot radial, or within such distance in any place in a public manner. No electioneering banner, button, poster or placard on behalf of or in opposition to any candidate or issue to be voted upon shall be allowed in or upon the polling place or within such one hundred feet therefrom during the election. Any person who willfully violates the provisions of this subdivision shall be guilty of a misdemeanor.

5. All official ballots shall remain in the custody of election inspectors within the polling place from the opening of the polls until the announcement of the result of the canvass and the signing of the inspectors' returns thereof. After the polls shall have been closed at any election held for the election of fire district officers or to vote upon a proposition, the election inspectors and ballot clerks shall immediately canvass publicly the ballots cast and the chairman of the election shall publicly announce the result. Within seventy-two hours thereafter, the chairman, election inspectors and ballot clerks shall execute and file a certificate of the result of the canvass with the board of fire commissioners and with the town clerk of each town in which said district or any part thereof may be located.

6. If in any fire district the number of voters is so great as to render it inexpedient or impossible to conduct the election at one polling place, the board of fire commissioners may divide the fire district into election districts and provide a polling place for each

such election district, provided, however, that the number of election districts in any fire district shall not exceed one for each six hundred electors plus one for a remaining fraction of six hundred. In such event, the notice specified in subdivision one of this section shall describe the election districts and state where the polling places will be located, and the board of fire commissioners shall designate not less than two nor more than four resident fire district electors, who shall be registered voters of the town, to act as election inspectors and ballot clerks at each such polling place. The board of fire district commissioners may adopt a resolution providing that such election inspectors and ballot clerks shall be paid for their respective services at any such annual election or at any special election of the fire district. Such resolution, if adopted, shall fix the amount of such compensation as follows: if the hours during which the polls will be open for the receipt of ballots are from six o'clock in the evening until nine o'clock in the evening, a sum not to exceed seventy dollars for each such official; if additional consecutive hours prior to six o'clock in the evening are determined and specified in the notice of election, a sum not to exceed one hundred dollars for each such official. No elective officer of the fire district shall serve as an election inspector or ballot clerk.

§ 175-a. Registration for voters. 1. The board of fire commissioners of any fire district may provide by resolution, that a proposition be submitted at any annual fire district election providing that additional personal registration of voters not registered with the board of elections shall be permitted for all elections in such fire district. Such additional personal registration may be terminated by a resolution of the board of fire commissioners and the passage of a proposition at any annual fire district election.

2. Registration for all fire district elections shall be conducted as follows:

(a) Only those persons registered with the board of elections on or before the twenty-third day before such election and those persons whose names are placed on the fire district register pursuant to the

provisions of this section shall be entitled to vote in such district.

(b) In fire districts in which there is additional personal registration, the board of fire commissioners shall publish a resolution at least twenty-seven days prior to election day, which shall designate the dates prior to registration day on which the inspectors of election shall meet to commence the preparation of the register; the place in each fire district where such meetings, registration, if any, and election shall be held; the hours for such meetings, registration, if any, and election; but in no event shall the hours for registration be less than the hours from six o'clock in the evening until nine o'clock in the evening. Such resolution shall be adopted at least thirty days prior to election day.

(c) In a fire district whose electors have approved additional personal registration, such registration shall be held on the seventeenth day prior to the annual fire district election, except in those fire districts which provide by resolution adopted at least thirty-seven days prior to the date of the first election for which it shall be effective, for an additional day of registration to be held on the nineteenth day prior to the annual fire district election. Such resolution shall remain in effect for subsequent annual elections, unless amended, modified or repealed.

3. The register for the annual fire district election shall be prepared in each fire district by the inspectors of election thereof on the days prior to registration day, if any, designated therefor, on the registration day, if any, at the times and places designated by the resolution of the board of fire commissioners. In preparing such register, the inspectors of election shall comply with the following procedure:

(a) They shall adopt, use or copy from, the registration list certified and supplied by the county board of elections the names appearing thereon of all persons residing in the fire district and qualified to vote in such forthcoming annual fire district election and in those instances in which additional persons are entitled to register pursuant to this section, such register shall be completed by adding thereto the names of the persons personally appearing before them and providing to their satisfaction to then be or at the time of election

qualified to vote.

(b) The register for each fire district shall include as a minimum the space for the name of the voter, his address within the fire district and a space for his or her signature to be signed by the voter on election day. Such register shall also contain a space for the signature of the voter to be signed by such voter on registration day, if any. If the register shall contain only space for the name, address and signature of the voter, the fire district secretary shall furnish a printed certificate to be signed by the voter who appears personally before the inspectors of election on registration day if his name does not already appear on the register. Such certificate shall contain a statement that the person possesses all the necessary qualifications for voting in fire district elections. Such certificate shall be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject the person signing it to the same penalty as if he had been duly sworn, and such provision shall be printed in bold type directly above the signature line of the certificate.

4. The fire district secretary shall furnish the inspectors of election, at fire district expense, with all necessary registration books, papers, equipment and supplies.

5. Registration for special fire district elections shall be held in the same manner as is provided herein for annual fire district elections, and registration days therefor shall be the same as if said special fire district election were the annual fire district election.

6. In lieu of the provisions for designating the chairman, election inspectors and ballot clerks, as set forth in subdivision one of section one hundred seventy-five of this chapter, the board of fire commissioners shall, by resolution adopted at least forty days prior to the annual fire district election, designate a resident fire district elector to act as chairman of any election of said district and shall designate not less than two nor more than four resident fire district electors to act as election inspectors and ballot clerks in such election. Such resolution shall fix the compensation of the chairman and

inspectors and, in addition, the board of fire commissioners may provide for alternate inspectors who shall assume the office of inspector upon the inability or refusal of an inspector to assume or perform his duties and for any clerical help which they may deem necessary. Such clerical help shall perform their duties under the direction and control of the chairman and inspectors of election.

§ 175-b. Absentee ballots for fire district elections; special provisions. 1. The board of fire commissioners of any fire district in which officers are elected, may, by resolution, provide for absentee ballots for fire district elections, in accordance with the provisions of this section. Such resolution shall take effect at the first such election held more than sixty days after its adoption and shall continue in effect for all such elections until a subsequent resolution providing otherwise shall, in like manner, have taken effect.

2. a. An applicant for such an absentee ballot shall submit an application setting forth (1) his or her name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that he or she is or will be, on the day of the election, a qualified voter of the district in which he or she resides in that he or she is or will be, on such date, over eighteen years of age, a citizen of the United States and has or will have resided in the district for thirty days next preceding such date; (3) that he or she is registered in the town; (4) that he or she will be unable to appear to vote in person on the day of the election for which the absentee ballot is requested because he or she is, or will be on such day (a) a patient in a hospital, or unable to appear personally at the polling place on such day because of illness or physical disability or (b) because his or her duties, occupation or business will require him or her to be outside of the county of his or her residence on such day, (c) because he or she will be on vacation outside the county of his or her residence on such day; or, (d) absent from his or her voting residence because he or she is detained in jail awaiting action by a grand jury or awaiting trial or is confined in prison after conviction for an offense other than a felony. Such application must be received by the district secretary at

least seven days before the election if the ballot is to be mailed to the voter, or the day before the election, if the ballot is to be delivered personally to the voter or his or her agent.

b. (1) Where such duties, occupation or business are of such a nature as ordinarily to require such absence, a brief description of such duties, occupation or business shall be set forth in such affidavit.

(2) Where such duties, occupation or business are not of such a nature as ordinarily to require such absence, such application shall contain a statement of the special circumstances on account of which such absence is required.

c. Where the applicant expects in good faith to be absent on the day of the election because he or she will be on vacation elsewhere on such day, such application shall also contain the dates upon which he or she expects to begin and end such vacation, the place or places where he or she expects to be on such vacation, the name and address of his or her employer, if any, and if self-employed, a statement to that effect.

d. Where the absence is because of detention or confinement to jail, such affidavit shall state whether the voter is detained awaiting action of the grand jury or is confined after conviction for an offense other than a felony.

e. Where a person is or would be, if he or she were a qualified voter, entitled to apply for the right to vote by absentee ballot under the provisions of this section, his or her spouse, parent or child, if a qualified voter and a resident of the same district, shall be entitled to vote as an absentee voter upon personally making and signing an application in accordance with the preceding provisions of this subdivision and showing that he or she expects to be absent from the district on the day of the district election by reason of accompanying or being with the spouse, child or parent who is or would be, if he or she were a qualified voter, so entitled to apply for the right to vote by absentee ballot, and, in the event no application is made by such spouse, child or parent, such further information as the fire district shall require.

f. Such application shall include the following statement to be signed by the voter.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for absentee ballots, I shall be guilty of a misdemeanor.

Date.....Signature of Voter.....

g. An applicant whose ability to appear personally at the polling place of the district of which he or she is a qualified voter is substantially impaired by reason of permanent illness or physical disability and whose registration record has been marked "permanently disabled" by the board of elections pursuant to the provisions of the election law shall be entitled to receive an absentee ballot pursuant to the provisions of this section without making separate application for such absentee ballot, and the secretary of the fire district, upon being advised by the board of elections on or with the list of registered voters that the registration record of a voter is marked "permanently disabled", shall send an absentee ballot to such voter at his or her last known address by first class mail with a request to the postal authorities not to forward same but to return same in five days in the event that it cannot be delivered to the addressee. The election inspectors of the fire district shall make an appropriate entry on the registration record indicating the fact that an absentee ballot has been sent and the date of mailing.

3. If, upon examining the application required under the provisions of subdivision two of this section, and upon such inquiry as it deems proper, the election inspectors of the fire district shall be satisfied that the applicant is a qualified voter of the district, and entitled to vote by absentee ballot, such election inspectors shall place his or her name upon a list, thereupon the applicant shall be issued or mailed an absentee voter's ballot and the election inspectors of the fire district shall make an appropriate entry on the list indicating that an absentee ballot has been applied for by, and issued to, the applicant.

4. Ballots for absentee voters shall be, as nearly as practicable, in the same form as those to be voted at the district election; if the vote at such election shall be by ballot, the absentee ballot shall conform to that part of the regular ballot which relates to the election of district members; if the vote of such election shall be by voting machine, the absentee ballot shall be, as nearly practicable, in the same form as those to be voted in the district on election day and shall contain a space for a write-in or write-ins. On the back of such absentee ballots shall be printed the words "Official Ballot, Absentee Voter," followed by the words "For Officers of fire district."

5. a. The board of registration shall enclose each absentee voter's ballot in an envelope which shall be labelled:

ELECTION MATERIAL

PLEASE EXPEDITE

On one side of such envelope shall be printed:

OFFICIAL BALLOT, ABSENTEE VOTER

at

Fire District Election

Name of Voter.....

Residence (street and number, if any).....

City (or Town) of.....

County of.....

Fire district.....

The date of the election and name of the district shall be printed, and the name of the voter, residence and district shall be written in by the fire district.

b. On the reverse side of such envelope shall be printed the following statement:

STATEMENT OF ABSENTEE VOTER

I do declare that I will have been a citizen of the United States for thirty days, and will be at least eighteen years of age, on the date of the district election; that I will have been a resident of this state

and of the district if any, shown on the reverse side of this envelope for thirty days next preceding the said election and that I am or on such date will be, a registered voter of said district; that I will be unable to appear personally on the day of said district election at the polling place of the said district in which I am or will be a qualified voter because of the reason stated on my application heretofore submitted; that I have not qualified, or do I intend to vote, elsewhere than as set forth on the reverse side of this envelope; that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another to be paid or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this district election, and have not made any promise to influence the giving or withholding of any such votes; that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this district election; and that I have not been convicted of bribery or any infamous crime, or, if so convicted, that I have been pardoned or restored to all the rights of a citizen, without restriction as to the right of suffrage, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law removing my disability to register and vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of absentee voter, I shall be guilty of a misdemeanor.

Date.....Signature of Voter.....

c. The envelope shall be gummed, ready for sealing, and shall have printed thereon, on the side opposite the statement, instructions as to the duties of the voter after the marking of the ballot, which instructions shall include a specific direction stating that the envelope must reach the office of the district not later than five P.M. on the day of the election in order that his or her vote may be canvassed.

d. A person who shall make any material false statement in the statement of absentee voter appearing on the reverse side of the envelope as provided in this subdivision, shall be guilty of a misdemeanor.

6. a. The secretary of the fire district shall make a list of all persons to whom absentee voter's ballots shall have been issued and keep such list on file in the fire office where it shall be available for public inspection during regular office hours until the day of the election. Any qualified voter may, upon examination of such list, file a written challenge of the qualifications as a voter of any person whose name appears on such list, stating the reasons for such challenge. Such written challenge shall be transmitted by the secretary to the inspectors of election on election day.

b. Such list shall also be posted in a conspicuous place or places during the election, and any qualified voter may challenge the acceptance of the absentee voter's ballot of any person on such list, by making his or her challenge and the reasons therefor known to the election inspectors before the close of the polls.

7. a. The secretary of the fire district shall be authorized to call upon the commissioner of police or the county sheriff and the officers and members of the police force or sheriff's department for such assistance in the enforcement of the provisions of this section as such board shall require, and such commissioner and officers and members of the police force and sheriff's department shall be authorized to render such assistance.

b. The election inspectors of the fire district may require any person to attend before them at the office of the secretary of the district and be examined as to any matter in relation to which such district is charged with a duty under this section, and may issue a subpoena therefor. Each member of such election inspectors district shall be authorized to administer any oath that may be required or authorized by law in this connection.

8. No absentee voter's ballot shall be canvassed, unless it shall have been received in the office of the secretary of the district not later than five P.M. on the day of the election.

9. The secretary of the district shall, on the day of the election, transmit all absentee voters' envelopes, received by him or her in accordance with subdivision eight of this section, to the election inspectors.

10. If, at the district election, any absentee voters' envelopes shall have been received at the polling place, the election inspectors immediately after the closing of the polls shall examine them, and shall compare the signature, if any, on each envelope with the signature, if any, on the register, of the person of the same name who registered from the same address. If the signatures are found to correspond, the election inspectors shall certify thereto by signing their initials opposite the name of the voter at the appropriate place in the register. If a person whose name is on an envelope as a voter, shall have already voted in person at such district election, or if his or her name, residence and signature, as stated on the envelope, are not on the register, or if there is no signature on the envelope, this envelope shall be laid aside unopened and be returned unopened to the secretary of the district. If such person is found to be registered and has not so voted in person, and if no objection is made, or if an objection made be not sustained, the envelope shall be opened and the ballot withdrawn without unfolding and deposited in the proper box or boxes. At the time of the deposit of such ballot, the election inspectors shall enter the words "absentee vote" at an appropriate place in the register.

11. During such examination any qualified voter present in the polling place may object to the voting of the ballot contained in any envelope upon the ground or grounds (a) that the person named thereon is not a qualified voter of the district, or (b) that he or she was within the county or city while the polls of the election were open, except where the applicant is a patient in a hospital located within the county or city or detained or confined in a jail located within the county or

city and except where the ballot was obtained upon the ground of inability to appear personally at the polling place on the day of the fire district election because of illness or physical disability, or (c) that he or she was able to appear personally while the polls were open, in cases where the ballot was obtained upon the ground that the voter was a patient in a hospital located within the county or city or detained or confined in a jail located within the county or city or upon the ground of inability to appear personally at the polling place on the day of the election because of illness or physical disability, or (d) that he or she was not entitled to cast such ballot. An election inspector shall make such an objection if he or she shall know or suspect that the person named on such envelope is not such a qualified voter or was so within the district or was able so to appear personally, or was not entitled to cast such ballot. The election inspectors shall forthwith proceed to determine each objection including any written challenge transmitted to them by the district secretary as provided in subdivision six of this section. Unless the election inspectors, by majority vote, shall sustain the objection, the chairman, or if he or she refuses, another election inspector shall endorse upon the envelope the objection and the words "not sustained," shall sign such endorsement, and shall open the envelope and deposit the ballot as provided in this section. Should the election inspectors, by majority vote, sustain such objection, the objection and word "sustained" shall be similarly endorsed upon the envelope, the envelope shall not be opened nor the ballots therein canvassed, and such envelope shall be returned unopened to the secretary of the district. If the election inspectors shall have received an envelope endorsed with the name of a person who to the knowledge of the election inspectors is deceased on the day of the election, the election inspectors shall return such envelope unopened to the secretary of the district with the words "deceased--objection sustained" endorsed on the envelope.

12. If the election inspectors shall have received an envelope, and upon opening the same no ballot shall be found therein, the election inspectors shall make a memorandum showing that the ballot is missing. When the casting of absentee voters' ballots shall have been completed, the election inspectors shall ascertain the number of such ballots which

have been deposited in the ballot box by deducting from the number of envelopes opened the number of missing ballots, and shall make a separate return thereof in duplicate. The number of absentee voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box in order to determine the number of all ballots to be accounted for in the ballot box. Such ballots shall then be counted or canvassed by the election inspectors along with the other ballots cast at such district election, or, where voting machines are used, shall be added to the votes recorded on such machines.

13. The provisions of this section shall apply to absentee ballots at fire district elections, notwithstanding any other provision of law. The provisions of any other law as they relate to fire district elections not inconsistent herewith shall apply to the conduct of such elections.

§ 175-c. Notice of hearings and elections. 1. In addition to any other notice or posting requirement, every fire district secretary shall cause a notice of any upcoming hearing or election to be posted on the fire district website, if one exists. Such notice shall be posted for at least fifteen days prior to such hearing or election and shall not be posted any sooner than twenty days before such hearing or election. If the fire district maintains a sign board, a copy of such notice shall also be posted on the sign board.

2. Every fire district secretary shall provide, in a timely manner, a notice of any upcoming hearing or election to be posted on the municipal website of any town located within the geographic boundaries of the district, or any town or fire district with which the district contracts. Such posting shall only be required if such a website exists. Such notice shall be posted for at least fifteen days prior to such hearing or election and shall not be posted any sooner than twenty days before such hearing or election. In addition, the town clerk shall post or cause to be posted on the bulletin board in his or her office a copy of such notice and on the sign board maintained by him or her pursuant to subdivision six of section thirty of this chapter. The town clerk

shall cooperate with the fire district to ensure the timely notification of the upcoming hearing or election.

3. The notice required by this section shall specify the time when and the place where such hearing or election will be held, and, with respect to elections, the officers to be elected, their terms of office, and details regarding other matters to be voted on, as well as the hours during which the polls will be open for the receipt of ballots.

§ 176. Powers and duties of fire district commissioners. Subject to law and the provisions of this chapter, the fire district commissioners of every fire district shall constitute and be known as the board of fire commissioners of such fire district. Such board of fire commissioners

1. Shall elect one of their members as chairman at the first meeting of fire commissioners after such district shall have been established and annually thereafter at the first meeting thereof following each election of fire district officers. Such chairman, when present, shall preside at the meetings of the board of fire commissioners. In the absence of the chairman the other members may designate one of their members to act as temporary chairman.

2. Shall appoint a fire district secretary.

2-a. May, notwithstanding the provisions of subdivision two of section one hundred seventy-four of this chapter, provide by resolution that a proposition shall be submitted at any annual fire district election, other than one at which a fire district treasurer is required to be elected, determining that the office of fire district treasurer shall be an appointive office in such district. If such proposition be approved at such election, the office of fire district treasurer shall thereafter be an appointive office in such district and no fire district treasurer shall be elected at the expiration of the term of office of the incumbent elected fire district treasurer. The board of fire commissioners at its organization meeting shall annually appoint a fire

district treasurer to hold office until the thirty-first day of December next succeeding his appointment. In any fire district in which the office of fire district treasurer has been made appointive, the fire district commissioners shall designate one of their members to act as temporary chairman at the organization meeting each year until such time as a chairman of the board of fire commissioners shall be chosen.

In any fire district in which the office of appointed fire district treasurer may exist, the board of fire commissioners may provide by resolution that a proposition shall be submitted at any annual fire district election determining that the office of fire district treasurer shall be an elective office in such district. If such proposition be approved at such election, the office of fire district treasurer shall thereafter be an elective office in such district and a fire district treasurer shall be elected at the next succeeding annual fire district election in accordance with the provisions of subdivision two of section one hundred seventy-four of this chapter and the term of office of the appointive fire district treasurer for whom such successor shall be elected shall expire on the thirty-first day of December next succeeding such annual fire district election.

3. Whenever a vacancy shall occur in any fire district office, the board of fire commissioners of such district, or a majority of the members thereof in office may appoint a qualified person to fill the vacancy. If the appointment be made to fill a vacancy in an appointive office, the person so appointed shall hold office for the remainder of the unexpired term. If the appointment be made to fill a vacancy in an elective office, the person so appointed shall hold office until the thirty-first day of December next succeeding the first annual fire district election held thereafter and at such election a successor shall be elected for the unexpired portion of the term beginning on the first day of January next succeeding. If a vacancy shall occur in any elective fire district office after the first day of October in any year, the person so appointed to fill the vacancy shall hold office until the thirty-first day of December of the following calendar year and a successor shall be elected at the annual fire district election held immediately prior thereto to serve for the unexpired portion of the

term; provided, however, that if a vacancy so occurs in any elective fire district office, the term of which would expire on the thirty-first day of December next succeeding, the person so appointed shall hold office only until such thirty-first day of December.

4. Shall require the fire district treasurer, before entering upon the duties of his office, to give an official undertaking, conditioned for the faithful performance of his duties and that he will well and truly keep, pay over and account for all moneys and property belonging to the fire district and coming into his hands as such treasurer, in such form, in such sum and with such sureties as the board of fire commissioners shall direct and approve and such approval shall be indicated upon such undertaking, and when approved such undertaking shall be filed in the office of the town clerk of the town in which such fire district is located. If such district is situated in more than one town, a duplicate original of such undertaking, approved by the board of fire commissioners, shall be filed in the office of the town clerk of each town in which such district is located. The fire district commissioners may by resolution determine that such undertaking shall be executed by a surety company authorized to transact business in the state of New York and that the expense thereof shall be a charge on the fire district.

4-a. Shall audit all claims against the fire district and shall, by resolution, order the payment thereof by the fire district treasurer in the amounts allowed. Except as otherwise provided by this subdivision, no such claim shall be audited or ordered paid by the board of fire commissioners unless an itemized voucher therefor, in such form as the board of fire commissioners shall prescribe, shall have been presented to the board of fire commissioners for audit and allowance. The board of fire commissioners may provide by resolution that no such claims may be presented, audited or paid unless they be either verified under oath, or, in lieu of such verification, certified, to be true and correct in a statement signed by or on behalf of the claimant. The provisions of this subdivision shall not be applicable to claims for the payment of fixed salaries, compensation for services of officers or employees regularly engaged by the fire district at agreed wages by the hour, day, week, month or year unless so required by resolution of the board of fire

commissioners adopted at the organization meeting in the month of January, the principal of or interest on obligations issued by the fire district, fixed amounts becoming due on lawful contracts for the purchase of water for fire protection, and amounts which the fire district may be required to pay to the state employees' retirement system on account of contributions for past and current services of firefighters. The board of fire commissioners may, further, by resolution authorize the payment in advance of audit of claims for light, telephone, postage, freight and express charges. All such claims shall be presented at the next regular meeting for audit, and the claimant and the officer incurring or approving the same shall be jointly and severally liable for any amount disallowed by the board of fire commissioners.

4-b. Any fire commissioner, secretary or treasurer of a fire district may administer any necessary oath in any matter or proceeding lawfully before him, or in connection with any paper to be filed with him as such officer.

4-c. Notwithstanding the provisions of subdivision four-a of this section, may by resolution establish a petty cash fund for the fire district treasurer for the payment, in advance of audit, of properly itemized and verified or certified bills for materials, supplies or services furnished to the fire district for the conduct of its affairs and upon terms calling for payment to the vendor upon the delivery of any such materials or supplies or the rendering of any such services. The amount of such petty cash fund shall not exceed two hundred fifty dollars. At the time of any payment from such fund, the treasurer shall require delivery to him of a bill in form sufficient for audit by the board of fire commissioners as required by law. At each meeting of the board of fire commissioners a list of all expenditures made from such fund since the last meeting of the board, together with the bills supporting such expenditures, shall be presented by the treasurer to the board of fire commissioners for audit. The board of fire commissioners shall direct the treasurer to reimburse such petty cash fund from the appropriate budgetary item or items, in an amount equal to the total of such bills which it shall so audit and allow. Any of such bills or any

portion of such bills which the board of fire commissioners shall refuse to audit and allow shall be the personal liability of the treasurer and he shall promptly reimburse such petty cash fund in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to the treasurer after the action of the board of fire commissioners in disallowing an amount so expended, such amount shall be withheld from such salary payment to the treasurer and, if necessary, subsequent salary payments and paid into such petty cash fund until an amount equal to the amount so disallowed in the audit of the board of fire commissioners has been repaid to the petty cash fund. Any bond or undertaking filed by the treasurer shall be available to the fire district for recovery of any losses incurred by reason of the operation of such petty cash fund.

5. Shall cause a map to be prepared showing the exact boundaries of the fire district. If such map indicates boundary lines that are contiguous with an adjacent fire district or fire districts, then such adjacent fire district or fire districts shall be given written notice, by certified mail, return receipt requested, addressed to the secretary of such fire district, of the intention to file a fire district map, together with a copy of such map. Such notice shall be sent by the secretary of the fire district preparing such map. If an adjacent fire district objects to the location of a boundary line affecting such adjacent fire district, then within forty-five days of the receipt of such notification and map, such objections shall be filed with the fire district secretary of the fire district proposing such map and with the town clerk of each town in which any part of such fire district is located. If such map does not indicate any boundary lines contiguous with an adjacent fire district or fire districts, then a certified copy of such map shall be filed by the secretary of the fire district with the town clerk of each town in which any part of the fire district is located for approval by the town board and, when so approved and filed by the secretary of the fire district, in the office of the town clerk and filed by the secretary of the fire district in the office of the county clerk in which said fire district or any part thereof shall be located, shall constitute presumptive evidence of the boundaries of the fire district. If such map indicates any boundary lines that are

contiguous with an adjacent fire district, such map shall be submitted by the secretary of the fire district to the town clerk of each town in which any part of the fire district is located, together with proof of service upon such adjacent fire district or fire districts of such proposed map, and that more than forty-five days have elapsed since such service was made. In addition, if objections have been filed, then a verified statement either amending the proposed map to meet such objections or denying such objection in whole or in part, shall also be filed. If the objections are denied, the town board in which town such disputed boundary line is located shall, within thirty days after the submission of all proofs, objections and denials, cause the town engineer, if there be one, or, if not, hire a licensed land surveyor, to survey the boundary line or lines. If the disputed line or lines lie in more than one town, the town boards, acting jointly by a majority vote of the members of each such town shall determine which town engineer or licensed land surveyor shall survey the boundary line or lines. The cost of this survey, if any, shall be borne equally by the fire districts involved. Upon receipt by the town board or town boards of the survey of the disputed boundary line or lines, each involved fire district shall be immediately notified by the town clerk or town clerks. If no objections are served upon the town clerk or clerks by adjacent fire districts within sixty days of receipt of such notification or the boundary line or lines have been adjusted to meet objections, then thereafter and within twenty days, the town board or town boards if one disputed line or lines lie in more than one town shall cause a public hearing to be held, at which hearing owners of real property in the affected area shall be given an opportunity to be heard. Upon the conclusion of said public hearing, the town board shall determine the disputed line or lines, and if the disputed line or lines lie in more than one town, the town boards acting jointly by a majority vote of the members of each such town board shall determine the disputed line or lines and a copy of such map, as finally approved by the town board or town boards, shall be filed in the office of the town clerk or clerks and certified copy shall be filed in the office of the county clerk in which said fire district or any part thereof shall be located. Such map shall then constitute presumptive evidence of the boundaries of the fire district. The town clerk shall notify each affected fire district of the

filing of such map in such town clerk's office or offices and in the office of the county clerk. The town clerk or clerks shall also publish a notice of the filing of said map in the official paper of the town or towns. Any fire district believing itself aggrieved or aggrieved property owner may within thirty days of receipt of notification or publication commence an appropriate proceeding in the supreme court of the state of New York, in accordance with article seventy-eight of the civil practice law and rules, naming the involved fire district and the town board or boards as respondents. All fire district maps heretofore approved by the town board of each town in which any part of the fire district is located and which map was filed in the office of the clerk of each town in which said fire district is located and filed in the office of the county clerk in which said fire district or any part thereof is located, prior to the first day of January, nineteen hundred eighty-one, shall continue to be presumptive evidence of the boundaries of such fire district.

6. Shall give notice of annual elections in the manner provided in this article.

7. Shall require that candidates for district offices file their names with the secretary of the fire district at least twenty days prior to the date of such fire district elections and in addition may provide by resolution that such nominations be submitted in petition form subscribed by twenty-five qualified voters of the district. Thereafter the ballots prepared for the election of fire district officers shall specify the names of the candidates duly filed and in addition provide proper blank spaces for each office to be filled at such election. If any such resolution shall be adopted, the requirements thereof shall be specified in the notice of each fire district election held thereafter. The board of fire commissioners may rescind such resolution at any time and thereafter fire district officers shall be elected as otherwise provided herein.

8. Shall appoint officials for fire district elections as provided in section one hundred seventy-five of this chapter and may provide for their compensation pursuant to such section.

9. Shall have the power to make any and all contracts for the purposes herein authorized within the appropriations approved by the taxpayers of the district or within the statutory limitations specified herein.

10. May organize, operate, maintain and equip fire companies, including the purchase of uniforms to be used by the members of such companies, and provide for the removal of such members for cause.

11. May adopt rules and regulations governing all fire companies and fire departments in said district and prescribing the duties of the members thereof and enforce discipline and provide for public drills, parades, funerals, inspections and reviews of the fire district fire department, or any company or unit thereof, within the fire district or at other places within the state, any adjoining state or in Canada. Such rules and regulations shall not authorize any member of the board of fire commissioners to interfere with the duties of the chief or assistant chief at such times as the fire department or any company or squad thereof is on duty.

11-a. The members of the fire department of the fire district shall meet at a time and place designated by the board of fire commissioners on the Thursday following the first Tuesday in April of each year and nominate persons for the offices of chief and such assistant chiefs as may be provided for in the rules and regulations adopted by the board of fire commissioners. If the Thursday following the first Tuesday in April falls upon a day of special religious observance, the board of fire commissioners may designate any other weekday in April after such Thursday as the day upon which to hold such meeting. Each nominee shall be a member of the fire department. In addition, the board of fire commissioners may by resolution require that any or all of such fire department officers shall be residents of the fire district. All nominations shall be made by ballot. The person acting as secretary of such meeting shall promptly notify the fire district secretary in writing of such nominations. The board of fire commissioners at its meeting next succeeding the making of such nominations shall consider the same and shall appoint such persons to the offices to which they

have been respectively nominated or, if a nomination is not approved the board of fire commissioners shall call another meeting of the members of the fire department at which a new nomination shall be made to take the place of any nomination not approved, which procedure shall continue until a full set of officers is approved. Any such person shall assume the duties of his office as soon as he has been appointed thereto by the board of fire commissioners and shall serve until his successor is appointed. A person who has been convicted of arson in any degree shall not be eligible for nomination, election or appointment to the office of fire department chief or assistant chief. Any fire department chief or assistant chief who is convicted of arson in any degree during his term of office shall be disqualified from completing such term of office.

11-b. The members of the fire department at a regular or special meeting of the department held after the month of April but prior to the month of November in any year may adopt a resolution recommending that future meetings for the nomination of the chief and assistant chiefs be held in December, either on the first Thursday, the first Saturday, the Thursday following the first Tuesday, the Saturday following the first Tuesday, the Thursday following the second Tuesday, or the Saturday following the second Tuesday in such month, instead of April as provided in subdivision eleven-a of this section. Provided, however, the Davis Park fire department may adopt a resolution to hold future meetings, for nomination of chief and assistant chiefs, on the last Sunday in September; the Caton fire district may adopt a resolution to hold future meetings, for nominations of chief and assistant chiefs, on the second Tuesday in December; the Cherry Grove fire department may adopt a resolution to hold future meetings, for nomination of the chief and assistant chiefs, on the third Saturday in September; and the Fair Harbor fire department may adopt a resolution to hold future meetings, for nomination of the chief and assistant chiefs, on the third Sunday in September. The notice or call for such meeting shall specify that such a resolution will be offered to be voted upon at such meeting. If such resolution is adopted, the board of fire commissioners may adopt a rule or regulation providing that future meetings for the nomination of chief and assistant chiefs shall be held in December, either on the first Thursday, the first Saturday, the Thursday following the first Tuesday,

the Saturday following the first Tuesday, the Thursday following the second Tuesday, the Saturday following the second Tuesday in such month, the last Sunday in September in the Davis Park fire department, the second Tuesday in December in the Caton fire district, the third Saturday in September in the Cherry Grove fire department, or the third Sunday in September in the Fair Harbor fire department, as specified in the fire department resolution, instead of April as provided in subdivision eleven-a of this section. Each nominee shall be a member of the fire department. In addition, the board of fire commissioners may by resolution require that any or all of such fire department officers shall be residents of the fire district. All nominations shall be made by ballot. The person acting as secretary of such meeting shall promptly notify the fire district secretary in writing of such nominations. The board of fire commissioners at its organization meeting in the month of January next succeeding the making of such nominations shall consider the same and shall appoint such persons to the offices to which they have been respectively nominated or, if a nomination is not approved the board of fire commissioners shall call another meeting of the members of the fire department at which a new nomination shall be made to take the place of any nomination not approved, which procedure shall continue until a full set of officers is approved. Any such person shall assume the duties of his office as soon as he has been appointed thereto by the board of fire commissioners and shall serve until his successor is appointed. A person who has been convicted of arson in any degree shall not be eligible for nomination, election or appointment to the office of fire department chief or assistant chief. Any fire department chief or assistant chief who is convicted of arson in any degree during his term of office shall be disqualified from completing such term of office.

If the date of meetings for the nomination of chief and assistant chiefs is changed from April to September or December pursuant to the foregoing provisions of this subdivision, the members of the fire department at a regular or special meeting of the department held after the month of April but prior to the month of November in any year may adopt a resolution recommending that future meetings for the nomination for such officers shall be held in April pursuant to the provisions of subdivision eleven-a of this section. The call for such meeting shall

specify that such a resolution will be offered to be voted upon at such meeting. If such a resolution is adopted, the board of fire commissioners may adopt a rule or regulation providing that future meetings for the nomination of chief and assistant chiefs shall be held in April pursuant to the provisions of subdivision eleven-a of this section and that the provisions of such subdivision eleven-a shall again become applicable.

11-c. May adopt a resolution to employ paid firefighters and paid fire officers including but not limited to a paid chief of the fire district department, provide for their powers and duties, determine the chain of command in the fire department as between volunteer and paid firefighters, determine that paid chief and/or any other paid officers shall have charge of apparatus and other equipment, and determine that the volunteer firefighters and volunteer officers of the fire department shall act under the orders and control of such paid fire officers. The board of fire commissioners may adopt a resolution to appoint a paid chief of the fire district department only after holding a public hearing prior to adopting such resolution. The notice of such hearing shall be published and posted and such hearing shall be held in the manner provided in section one hundred seventy-one of this article for a hearing upon the establishment of a fire district. The notice shall state the reason for the hearing including but not limited to the proposed employment of and proposed salary for the paid chief.

12. May contract for a supply of water and for the furnishing, erection, maintenance, care and replacement of fire hydrants, including the erection and maintenance of markers therefor, and removal of snow and ice to provide access thereto, for fire purposes for a period not exceeding five years without any appropriation vote therefor by the qualified voters of such district.

12-a. In order to provide a supply of water for firefighting purposes for any area of a fire district which does not have an adequate and available supply or which cannot be suitably supplied by contract pursuant to subdivision twelve of this section, (1) may purchase permanent or temporary rights to take water from cisterns, wells, and

bodies of water and water-courses within the fire district, or may lease such rights, and (2) may purchase, construct or lease, and maintain, fire suction pools in bodies of water and water-courses, fire cisterns and fire wells, including necessary pipes, pumps, hydrants and other facilities in connection therewith, and may purchase and lease necessary real property and rights in land and water therefor. The water and improvements shall be used for fire-fighting purposes only and the water shall not be sold. The fire suction pools, fire cisterns and fire wells shall be fenced or covered to prevent trespass by children and domestic animals. Any such improvement shall be located upon real property within the fire district which is owned or leased by the fire district or upon which an easement has been acquired by the fire district, except such portions of the improvement which are located within the bounds of public highways, roads or streets with the consent of the state or local official charged with the supervision of the highway, road or street. The board of fire commissioners may purchase insurance to protect the fire district from liability for damage to persons or property resulting from the maintenance of any such improvement by the fire district. If, after proceeding pursuant to this subdivision, an adequate and available supply of water for fire-fighting purposes becomes available for such area or if a suitable supply may be obtained therefor by contract pursuant to subdivision twelve of this section, the fire district, nevertheless, may continue to act pursuant to this subdivision.

13. May purchase or lease apparatus and equipment for the extinguishment and the prevention of fires and for the purposes of emergency rescue and first aid and fire police squads.

14. For the preservation, protection and storing of fire apparatus and equipment and for the social and recreational use of the firefighters and residents of the district and for any of the purposes authorized by law, may acquire by purchase, lease, gift, devise or by condemnation, real property and erect, construct, alter, repair and equip suitable buildings, and may furnish necessary supplies for such purposes, and may lease portions thereof not required for fire district purposes. All real property required by any fire district for any purpose authorized by this article shall be deemed to be required for public use and may be

acquired by such fire district.

15. May construct and maintain an adequate fire alarm system in said district.

16. May contract to provide outside of the fire district (1) fire protection, (2) emergency service in case of accidents, calamities or other emergencies, or (3) general ambulance service pursuant to the provisions of section two hundred nine-b of the general municipal law, upon such terms as the board of fire commissioners may determine proper, provided that such service can be supplied without undue hazard to the fire district furnishing the service. Whenever the fire department or fire company of a fire district provides any such service to outside territory pursuant to a contract, as aforesaid, the board of fire commissioners of such fire district may pay to the fire department of such fire district, or to any fire company or companies of such fire district, performing the service, such portion of the contract price as such board may deem proper, but not in any event to exceed thirty-five per centum of such contract price. The amount received pursuant to any such contract may be expended without being included in the amount that may be expended annually without the adoption of a proposition therefor as provided in subdivision numbered eighteen of this section and in section one hundred seventy-nine of this chapter.

17. May employ an attorney to counsel and assist in the discharge of its official duties and give it such professional services as it may require in conducting or defending any action or legal proceedings. If the town attorney shall be so employed he shall receive, in addition to his salary as town attorney, such compensation from the fire district as shall be agreed upon between the commissioners of the fire district and such town attorney, notwithstanding the provisions of section twenty-seven of this chapter.

18. May, without the adoption of a proposition, expend from the fire district revenues for any fiscal year amounts appropriated for

(1) the payments under contracts made pursuant to subdivisions twelve and twenty-two of this section,

(2) the payments required under a lease to provide a supply of water for fire fighting purposes entered into pursuant to subdivision twelve-a of this section,

(3) the payment of the principal of and interest on bonds, bond anticipation notes and capital notes issued by the fire district, and budget notes issued pursuant to the provisions of subdivisions five, six and seven of paragraph a of section 29.00 of the local finance law, and interest on tax anticipation notes issued pursuant to the provisions of paragraphs c-1 and c-2 of section 24.00 of the local finance law,

(4) the compensation of paid fire district officers, fire department officers, firefighters and other paid personnel of the fire department,

(5) contributions to the New York state employees' retirement system and the New York state and local police and fire retirement system on account of past and current services of paid fire district officers and employees, including the paid officers, firefighters and other personnel of the fire department,

(6) an assessment, charge, share or other payment required to be paid as the result of the participation by the fire district in any county self-insurance plan under article five of the workmen's compensation law,

(7) the cost of insurance secured to indemnify the fire district against liability for benefits or compensation required to be paid or furnished under or pursuant to the volunteer firefighters' benefit law and workers' compensation law, or for the payment of the benefits or compensation required to be paid or furnished under or pursuant to such laws by a fire district which is a self-insurer under such laws, to the extent that such benefits and compensation have not been recovered in such fiscal year under section twenty of the volunteer firefighters' benefit law or section twenty-nine of the workers' compensation law,

(7-a) the payment required annually to fund service awards to volunteer firefighters made pursuant to article eleven-A of the general municipal law,

(8) the cost of blanket accident insurance purchased under the provisions of section four thousand two hundred thirty-seven of the insurance law to insure volunteer firefighters against injury or death resulting from bodily injuries sustained by such firefighters in the performance of their duties,

(9) medical, surgical, hospital or other care or treatment and medical inspections required in connection with the disability of paid fire department personnel pursuant to section two hundred seven-a of the general municipal law, to the extent, if any, that such charges will not be paid by an insurance carrier or county self-insurance plan under the workmen's compensation law or have not been recovered in such fiscal year under such section two hundred seven-a or under section twenty-nine of the workmen's compensation law,

(10) employer's contributions for old age and survivors insurance coverage under article three of the retirement and social security law,

(11) the payment of the principal of and interest on indebtedness evidenced by tax anticipation notes issued pursuant to subdivision one of paragraph d of section 24.00 of the local finance law in relation to newly-created fire districts under subdivision twenty-six of this section, and

(12) the payment of compromised claims and judgments under subdivisions twenty-eight and thirty of this section;

(13) the cost of insurance secured to indemnify the fire district against liability arising out of the ownership, use or operation of motor vehicles owned by the fire district; and

(14) the payment of monetary rewards pursuant to subdivision thirty-one of this section.

(15) the cost of fuel for the fire district emergency vehicles, including fuel tax carry-overs.

(16) the cost of audits required pursuant to section one hundred eighty-one-a of this article.

(17) the cost of insurance secured to indemnify the fire district against liability for benefits required to be paid or furnished pursuant to the enhanced cancer disability benefit established in section two hundred five-cc of the general municipal law, or for the payment of benefits required to be paid or furnished pursuant to such law by a fire district which is a self-insurer under such law.

In addition to such expenditures, the board of fire commissioners of any fire district may, without the adoption of a proposition therefor, expend from the first district revenues for any fiscal year for purposes authorized by or pursuant to law not to exceed two thousand dollars and in districts having a full valuation of real property taxable for fire

district purposes in excess of one million dollars an additional amount equivalent to one mill for each dollar of full valuation of taxable real property in excess of the first million dollars of full valuation of such taxable real property. Such full valuation shall, for the purposes of this subdivision, be computed by dividing the assessed valuation of the real property subject to taxation by the fire district, as shown on the assessment roll for the fire district which was completed in the second calendar year prior to that in which the expenditure is to be made, by the town equalization rate established for such roll by the state board of equalization and assessment. Where, in the case of a newly-created fire district, there is no such completed assessment roll for such fire district, full valuation shall be determined from the assessment roll upon which the real property included within the district was assessed for town purposes and which was completed in the second calendar year prior to that in which the expenditure is to be made. In any fire district the foregoing limitations provided in this subdivision may be exceeded if a proposition has been adopted pursuant to paragraph (d) of subdivision one of section one hundred seventy-nine of this chapter.

The foregoing limitations on expenditures shall not be applicable to the proceeds of a contract for fire department services entered into pursuant to the provisions of subdivision sixteen of this section and such proceeds may be expended for purposes authorized by or pursuant to law.

The foregoing limitations on expenditures shall not be applicable to appropriations to or expenditures from a repair reserve fund, contingency and tax stabilization reserve fund, capital reserve fund, debt stabilization fund, workers' compensation reserve fund, mandatory reserve fund, unemployment insurance reserve fund or liability and casualty reserve fund established pursuant to sections six-d, six-e, six-g, six-h, six-j, six-l, six-m and six-n of the general municipal law, or to the use of the income and capital gains realized on the investments of the assets of such funds.

The foregoing limitations on expenditures shall not be applicable to

the use of premiums from the sale of fire district obligations, the unexpended portion of the proceeds of fire district obligations, the income and capital gains realized on the temporary investment of the proceeds, inclusive of premiums, of fire district obligations, as provided in section 165.00 of the local finance law.

The foregoing limitations on expenditures shall not be applicable to the use of the proceeds of a gift or gifts given to a fire district, and such proceeds may be expended for purposes authorized by or pursuant to law.

The provisions of this subdivision shall not be deemed to prevent the issuance of bonds, bond anticipation notes, capital notes or budget notes to finance any object or purpose for which the fire district may expend money.

The foregoing limitation on expenditures shall not be applicable to the use of insurance proceeds received for the loss, theft, damage or destruction of real or personal property when proposed to be used or applied to repair or replace such property. Such proceeds may be appropriated by resolution of the board of fire commissioners at any time for such objects and purposes.

The foregoing limitation on expenditures shall not be applicable to contributions to the state's unemployment insurance fund on account of salaries paid to fire district officers and employees, including the paid officers, firefighters and other personnel of the fire department.

18-a. May employ such persons as may be necessary to effectuate the objects and purposes of the district. Persons may be employed as paid firefighters, however, only after a public hearing in relation to such employment. Any such hearing shall be held by the board of fire commissioners and the notice of the hearing shall state the time when and place in the district where the hearing will be held, the number of paid firefighters to be employed and the total annual amount to be spent for the salaries or other compensation of such firefighters. The notice shall be published in the official newspaper of the district at least

once not more than twenty nor less than ten days before the hearing.

19. Shall have the exclusive management and control of the property of the fire district and may insure the same against loss or damage from any risk whatsoever and may contract at the expense of the district for insurance indemnifying the district, its officers, agents, employees and the members of all fire companies against any loss arising from injuries to persons or property through the operation and maintenance of such fire district and the performance of the duties thereof and insure the members of the fire department of the district against injury or death in the performance of their duties, or both.

20. May grant or withhold its consent to the formation of a fire corporation which intends to operate within the territory of such fire district, pursuant to subdivision (f) of section four hundred four of the not-for-profit corporation law.

21. Shall have and exercise all the powers conferred upon the fire district and such additional powers as shall be necessarily implied therefrom.

22. (a) May contract for the furnishing of fire protection within the fire district with any city, village, fire district, or incorporated fire company having its headquarters outside such fire district and maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district; provided there is no fire company maintaining its headquarters in said district or provided the fire department of said district is, in the judgment of such fire commissioners, unable to render adequate and prompt fire protection to such district or any area thereof. The contract also may provide for the furnishing of (i) emergency service in case of accidents, calamities or other emergencies in connection with which the services of firefighters would be required and (ii) general ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal law. In the event that the fire department or fire company furnishing fire protection within the district pursuant to contract does not maintain and operate an ambulance and provision has not otherwise been

made for ambulance service for the area of the district pursuant to section one hundred twenty two-b of the general municipal law then a separate contract may be made for the furnishing within the district of emergency ambulance service or general ambulance service, or both, with any city, village or fire district the fire department of which, or with an incorporated fire company having its headquarters outside the district which, maintains and operates an ambulance subject, however, in the case of general ambulance service, to the provisions of section two hundred nine-b of the general municipal law.

(b)(i) Except as provided in subparagraph (ii) of this paragraph, prior to commencing the negotiation process for such contract with an incorporated fire company, the incorporated fire company shall file with the board of fire commissioners a statement itemizing the estimated costs of the incorporated fire company attributable to the provision of services under the prospective contract. The estimated costs attributable to the provision of services under the prospective contract itemized in the statement shall include, at a minimum, those, if any, for: supplies; materials; operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs. If the fire company is required to prepare any of the following documents, copies shall be included with the statement:

(1) the fire company's most recent annual report of directors pursuant to section five hundred nineteen of the not-for-profit corporation law;

(2) the fire company's most recent verified certificate pursuant to subdivision (f) of section fourteen hundred two of the not-for-profit corporation law;

(3) the fire company's most recent internal revenue service form 990; and

(4) the fire company's most recent annual report pursuant to section thirty-a of the general municipal law.

(ii) The provisions of subparagraph (i) of this paragraph shall not apply to the renewal of a contract when the contract is deemed renewed in accordance with paragraph (e) of this subdivision. Upon good cause shown, the board of fire commissioners may, by resolution, waive in whole or in part the requirement that the fire company file the

statement, and copies of documents, required by subparagraph (i) of this paragraph.

(c) The contract shall not be entered into until a public hearing has been held by the board of fire commissioners. Notice of the hearing shall be published at least once in at least one newspaper having general circulation in the district. The notice shall specify the time when and place where the hearing will be held, and describe in general terms the proposed contract. The first publication thereof shall be at least ten days prior to the day specified for the hearing.

(d) Except as hereinafter provided, the term of the contract shall be for a definite period of time, but in no event shall the term exceed five years. The contract year or years in all such contracts entered into after the year nineteen hundred sixty shall terminate on December thirty-first.

(e) Instead of being for a definite term as hereinabove provided, the contract may be for an original term of one calendar year or less and provide that it shall be deemed renewed on the same basis each year thereafter for a further term of one full calendar year without any further public hearing unless one of the contracting parties shall notify the other in writing on or before the first day of August that it elects to terminate the contract on December thirty-first in that year. The term of any such contract, including renewals, shall not exceed five years, but the contract may provide that there shall be less than four such renewals. If the city, village or fire district fire department or fire company which is to furnish the service under such a contract is not a fully paid department or company, the city, village or fire district governing board upon the request of the department or company, shall terminate the contract as provided in this paragraph. Any contract entered into pursuant to this paragraph may provide that in the month of July of each year in which such a renewal could occur the fire district secretary shall notify the secretary of the fire department or fire company which is to furnish the service under the contract that the contract shall be deemed renewed on the same basis for a further full term of one calendar year unless one of the contracting parties shall notify the other in writing on or before the first day of August that it elects to terminate the contract on December thirty-first in such year.

(f) The contract shall specify a definite sum to be paid each year for

all of the services to be rendered thereunder and may provide that such amount shall be paid in one sum or in installments.

(g) By mutual consent of the contracting parties, and after a public hearing held pursuant to notice in the manner aforesaid, any such contract heretofore or hereafter executed may be (i) amended, (ii) terminated, or (iii) terminated and a new contract may be entered into in lieu thereof, if the board of fire commissioners, after such hearing, shall determine by resolution, that it is in the public interest so to do. Such notice shall state in general terms the reason why any existing contract is to be amended or terminated, and if a new contract is to be entered into the notice shall also describe the new contract in general terms.

(h) The term "fire protection", as used in this subdivision, includes inspections of buildings and properties in the fire district for the purposes specified in and as authorized by section eight hundred seven-a of the education law, subdivision four of section three hundred three of the multiple residence law, and section one hundred eighty-nine of the town law.

(i) The provisions of this subdivision shall not be deemed to have amended subdivision two of section two hundred nine-b or section two hundred nine-d of the general municipal law, or any other general, special or local law requiring the consent of a fire department, fire company or an emergency rescue and first aid squad to the entering into of a contract for services to be performed by such department, company or squad.

23. May sell or otherwise dispose of real and personal property of the district no longer necessary for any of its uses or purposes if, when and in the manner and to the extent authorized so to do in a proposition which is duly submitted and adopted or approved at a special or annual fire district election in the manner provided by section one hundred seventy-nine of this article for voting upon appropriations, except that if a proposition shall be submitted pursuant to the provisions of said section for the purchase of apparatus or if a proposition shall be submitted pursuant to the local finance law for the approval of a bond resolution or a capital note resolution for obligations to be issued for the purchase of apparatus, such proposition may specify that apparatus

or equipment owned by the district or the proceeds of the sale thereof is to be used in part payment for new apparatus and the adoption of such proposition shall authorize the sale or such other disposition of such apparatus or equipment, or if apparatus or equipment is to be purchased without the submission of a proposition as aforesaid apparatus or equipment owned by the district may be used as part payment for new apparatus or equipment without the adoption of a proposition therefor, and except also that the board of fire commissioners may at any time sell or otherwise dispose of real and personal property of the district no longer necessary for any of its uses or purposes if valued at less than one hundred thousand dollars but not below twenty thousand dollars, if, when and in the manner and to the extent authorized so to do in a resolution which shall be subject to a permissive referendum governed in the manner provided in subdivision seven of section six-g of the general municipal law and except also that the board of fire commissioners may at any time sell or otherwise dispose of real and personal property of the district no longer necessary for any of its uses or purposes without the adoption of a proposition therefor if the value of such real and personal property does not exceed the sum of twenty thousand dollars.

23-a. Shall award all contracts for public work and, except when the office of director of purchasing has been established and a director of purchasing shall have been appointed and qualified, all purchase contracts to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law. In any case of a purchase from a manufacturer of a motor vehicle used for fighting fires, whether or not including apparatus used in connection with such motor vehicle, having a period of probable usefulness of ten years as determined by section 11.00 of the local finance law, advertisement for sealed bids may be made and the purchase contract may be awarded for such motor vehicle and apparatus with the provision, if the board of fire commissioners shall so specify, that progress payments be made to the manufacturer as the motor vehicle or apparatus or both progresses, provided that evidence satisfactory to the board of fire commissioners as to the progress of such work be produced with each request by the manufacturer for a progress payment, and further provided that such progress payments shall not exceed four in

number and that at least twenty-five per cent of the contract price of the motor vehicle or apparatus or both be withheld by the board of fire commissioners until such motor vehicle or apparatus or both are delivered to and accepted by the board of fire commissioners, and further provided that every such contract providing for progress payments shall be accompanied by a surety bond of a property/casualty insurance company, as defined in section one hundred seven of the insurance law, for the completion of the work, specified in the contract, within the amount stipulated therein, which bond shall be filed with the board of fire commissioners.

24. May enter into an agreement with the town in which the fire district is located in whole or in part for the fire district to issue fire permits on behalf of the town as provided in and subject to the provisions of sections one hundred thirty-nine and one hundred seventy-six-a of this chapter and may terminate any such agreement as provided in such section one hundred thirty-nine.

25. Shall have power to cause investigations to be made to determine whether the provisions of laws relating to fire prevention and fire equipment are being complied with within the fire district and, in case there is found what appears to be a violation of any town building code or of any town ordinances, rules and regulations for fire prevention, or for the removal or repair of unsafe buildings or collapsed structures, shall report the same to the town building inspector appointed pursuant to section one hundred thirty-eight of this chapter, or, if there be no such official, to the town board, for appropriate action.

26. The amount of any indebtedness incurred by a newly created fire district prior to the first fiscal year for which an annual estimate is adopted, and the amount of the interest thereon, shall be included in the first statement of expenditures of the district submitted pursuant to section one hundred eighty-one of this chapter and shall be assessed and levied on the taxable property of such district and collected in the same manner and at the same time as the other amounts included in such statement of expenditures. The amount so raised shall not be subject to the limitations of subdivision eighteen of this section.

27. Shall have power to establish within the fire district one or more zones in which the rate of tax for fire district purposes shall be different from the rate for other zones or for the portion of the district not included in any zone, after a public hearing thereon. The notice of such hearing shall be published and posted and such hearing shall be held in the manner provided in this article for a hearing upon the establishment of a fire, fire alarm or fire protection district upon petition, except that the secretary of the board of fire commissioners shall perform the duties of the town clerk. Such notice shall specify the boundaries of the proposed zone or zones and the items of expense of the district which shall be charged against such zone or zones, other than those charged against the district as a whole, or the other respects in which the rates of tax for the proposed zone or zones are to be different from the rates for the remainder of the district. After such hearing and upon the evidence given thereat, the board of fire commissioners shall determine by resolution whether it be in the public interest to establish the proposed zone or zones. If it be determined that the establishment of such zone or zones be in the public interest, such board shall determine whether all the property, property owners and interested persons within the proposed zone or zones are benefited thereby or enjoy benefits greater than are conferred upon the remainder of the district, and whether all property or property owners benefited or who enjoy such benefits are included within such zone or zones, and it shall so alter the boundaries of such zone or zones that all property and property owners and only such property and property owners as are benefited and enjoy such benefits shall be included within the limits of such zone or zones. In the event, however, that it is found that any property, property owner or any interested persons not included in the zone or zones as originally proposed will be benefited thereby or enjoy such benefits, a further notice shall be posted and published and another hearing held as provided herein, unless all said additional property owners or interested persons affected file a written consent to be included in such zone or zones. When the boundaries of such zone or zones shall have been finally determined by such board, a certificate thereof shall be filed in the office of the town clerk or, if the district be situated in more than one town, in the offices of the town

clerks of all of the towns in which such district is situated, and such zone or zones shall be deemed established by the filing of such certificate. Such board shall also cause such zone or zones to be correctly marked upon the map of the fire district. It is intended that the provisions of this subdivision shall apply, for example, so as to permit one rate of taxation within a given distance of the fire house, where insurance rates are lower, and another rate for a greater distance from the fire house, or one rate for that portion of the district which does not have water hydrants and another rate for that portion of the district which has water hydrants, or in the event of any other unusual circumstances making the establishment of a zone or zones desirable. After such zone or zones shall be established, the annual statement of expenditures, filed pursuant to section one hundred eighty-one of this chapter, shall specify the amounts to be raised by taxation in said zone or zones, which are not to be a general charge against all of the property of the fire district, and such amounts shall be levied only upon the property included in such zone or zones. Notwithstanding any other provision of this chapter, the petition for the creation of a fire district may provide for the establishment of a zone or zones as aforesaid, and the town board or boards in the creation of the fire district may establish such separate zone or zones in the same manner that they established the fire district, but the provisions relating to the establishment of zones by the board of fire commissioners of a fire district shall be followed so far as applicable. In case a petition for the creation of a fire district calls for the establishment of such a zone or zones, the notice of the public hearing with respect to the creation of the fire district shall contain information similar to that required to be contained in the notice given by the secretary of the board of fire commissioners where the zone or zones are to be created by the board of fire commissioners and the town board or boards shall have all of the powers of a board of fire commissioners with respect to the creation of such zone or zones. The board of fire commissioners of a fire district in which a zone or zones shall have been established as hereinbefore provided may alter the boundaries of any such zone or zones or cause any such zone or zones to be abolished by procedure similar to that provided in this section for the establishment of a zone or zones by the board of fire commissioners.

28. May compromise any suits or claims now existing or hereafter arising against the fire district under section two hundred five-b of the general municipal law, and a tax may be levied against the taxable property of the fire district for such purpose in addition to the sums authorized by subdivision eighteen of this section, without the adoption of a proposition therefor, provided, however, that such compromise shall have been approved by the court in which such action is pending, or if not pending in any court, by a justice of the supreme court of the judicial district in which such fire district is located, on motion of either party supported by the affidavits of both an officer of such fire district and the claimant or claimants, and the affidavits of such other persons as the court or justice may require, setting forth facts sufficient to establish the liability of the fire district and its lack of adequate defense.

29. May authorize the use of voting machines at any annual or special election held within the fire district and such voting machine shall be used in accordance with the provisions contained in article nine of the election law.

30. May provide by taxation the sum necessary to pay any judgment recovered against the fire district, or may provide such sum, in whole or in part, pursuant to the local finance law and any taxes levied for such purpose against the taxable property of the fire district shall be in addition to the sums authorized by subdivision eighteen of this section without the adoption of a proposition therefor.

31. May offer monetary rewards, in sums not to exceed one thousand dollars, to individuals for information leading to the arrest and conviction of any person or persons for felonies or misdemeanors directly connected to vandalism or theft of district property. Such rewards may be offered on any conditions the board may determine, subject to whatever qualifications it may deem appropriate.

32. May engage a certified public accountant or public accountant to audit the accounts and fiscal affairs of the fire district.

33. May authorize the use of fire equipment and apparatus belonging to the fire district for the purpose of participation in the funeral of a deceased member or former member of a fire department or fire company within the district including the transportation of the body of the deceased firefighter.

34. May adopt a resolution authorizing the application of the agricultural value assessment established pursuant to article twenty-five-AA of the agriculture and markets law to the special assessment or special ad valorem levy made on behalf of the district on land benefitting from the agricultural value assessment under article twenty-five-AA of the agriculture and markets law located within the district. A copy of this resolution shall be delivered to the assessor or assessors of the unit or units in which the district is located and shall be effective on the assessment roll prepared after the next taxable status date following its adoption. A resolution repealing this exemption shall be delivered to the assessor or assessors of the assessing unit or units in which the district is located and shall be effective on the assessment roll prepared after the next taxable status date following its adoption.

§ 176-a. Duties of chief and assistant chiefs of fire department of fire district. 1. The chief shall, under the direction of the board of fire commissioners, have exclusive control of the members of the fire department of the fire district at all fires, inspections, reviews and other occasions when the fire department is on duty or parade; he shall also have supervision of the engines, fire trucks, pumpers, hose wagons and other apparatus and of the equipment and other property used for the prevention or extinguishment of fire and of all officers and employees of the fire department. He shall see that the rules and regulations of the board of fire commissioners are observed and that the orders of the board of fire commissioners are duly executed. He shall, whenever required by the board of fire commissioners, report to said board the condition of the property of said fire district and such other information as may be required of him. He shall hold the members,

officers and employees of the fire department strictly to account for neglect of duty and may suspend them for improper conduct, subject to the action of the board of fire commissioners at its next meeting. In case of the disability or absence of the chief, the first assistant chief, and in the case of the disability or absence of both the chief and first assistant chief, the other assistants, in numerical order, shall perform the duties and exercise the powers of the chief. When the fire department or any company or squad thereof is on duty no member of the board of fire commissioners shall interfere with the duties of the chief or assistant chief.

2. If an agreement in relation to the issuance of fire permits is entered into between the town board and the board of fire commissioners pursuant to section one hundred thirty-nine and subdivision twenty-four of section one hundred seventy-six of this chapter, the duties performed for the fire district by the chief, or an assistant chief, of the fire district fire department in relation to the issuance of the fire permit, or any preliminary investigation in connection therewith shall, in the case of any such officer who is a volunteer firefighter, be deemed to have been performed by him or her in his or her capacity as such and to be a duty within the meaning of paragraph c of subdivision one of section five of the volunteer firefighters' benefit law and shall, in the case of any such officer who is a paid firefighter, be deemed to have been performed by him or her in his or her capacity as such and to be a duty within the meaning of section two hundred seven-a of the general municipal law and other laws applicable in the event of injuries to or death of paid firefighters in line of duty. A chief or an assistant chief who is a volunteer firefighter shall not receive any remuneration for his or her services in relation to the issuance of such permits and any investigation in relation thereto, and any such officer who is a paid firefighter shall not receive any additional remuneration above his or her regular salary for any such service. Any such officer shall, however, be entitled to his or her actual and necessary travel expenses or mileage in connection with such services as provided in section one hundred seventy-eight-c of this article.

§ 176-b. Volunteer members of fire district fire companies. 1. The volunteer members of a fire company shall be elected and appointed as provided in this section.

2. The board of fire commissioners shall appoint residents of the fire district as the volunteer members of any newly organized fire company. Thereafter, the fire company may elect other eligible persons, including fire district officers, as volunteer members. The election shall be pursuant to the by-laws, if any, of the fire company; otherwise, by a three-fourths vote of the members of the fire company present and voting at a regular or special meeting thereof. The membership of any person so elected shall become effective when approved by resolution of the board of fire commissioners. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving, within forty days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the secretary of the board of fire commissioners, either personally or by mail.

3. Any person elected to membership as a volunteer member of a fire company shall be a resident of the fire district or of territory outside the fire district which is afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, except as otherwise provided in subdivision six.

4. The membership of a volunteer member of a fire company shall terminate when he ceases to be a resident of the fire district or of any territory outside the fire district which is afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, except as otherwise provided in subdivision five.

5. Any fire company may authorize the continued membership of any volunteer member where such member notifies the secretary of his or her fire company (a) that he or she plans to change his or her residence to

territory which is not in the fire district and is not protected by the fire department of the district, or any fire company thereof, pursuant to a contract for fire protection, and (b) that by reason of his or her residence in the vicinity or his or her usual occupation he or she will be available to render active service as a volunteer firefighter in the fire district or in territory outside the fire district which is afforded fire protection pursuant to a contract for fire protection by the fire department of the fire district, or a fire company thereof. Such authorization shall be pursuant to the by-laws, if any, of the fire company of which he or she is a member, otherwise by a three-fourths vote of the members of such fire company present and voting at a regular or special meeting thereof. Such authorization shall not become effective unless approved by resolution of the board of fire commissioners. Such authorization shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving, within forty days after service of written notice of such authorization shall have been made by the secretary of the fire company upon the secretary of the board of fire commissioners, either personally or by mail. Any membership continued pursuant to the provisions of this subdivision shall terminate when the member cannot meet either the requirements of this subdivision or the residence requirements of subdivision three of this section. In the case of a fire district which adjoins another state, the term "vicinity", as used in this subdivision, includes territory in this state and territory in the adjoining state.

6. A person who cannot meet the residence requirements of subdivision three of this section may be elected to membership as a volunteer member of any fire company of the fire department if by reason of his or her residence in the vicinity or his or her usual occupation he or her will be available to render active service as a volunteer firefighter in the fire district or in territory which is afforded fire protection pursuant to a contract for fire protection by the fire department of the fire district, or a fire company thereof. Such election shall be pursuant to the by-laws, if any, of the fire company; otherwise by a three-fourths vote of the members of the fire company present and voting at a regular or special meeting thereof. The membership of any person so elected

shall not become effective unless approved by resolution of the board of fire commissioners. Membership shall be deemed to have been approved pursuant to this subdivision in the event that no action is taken by the board of fire commissioners, either approving or disapproving within seventy days after service of written notice of election to membership shall have been made by the secretary of the fire company upon the secretary of the board of fire commissioners, either personally or by mail. The membership of any volunteer member elected pursuant to the provisions of this subdivision shall terminate when the member cannot meet either the requirements of this subdivision or the residence requirements of subdivision three of this section. In the case of a fire district which adjoins another state, the term "vicinity", as used in this subdivision, includes territory in this state and territory in the adjoining state.

7. (a) The membership of any volunteer firefighter shall not be continued pursuant to subdivision five of this section, and persons shall not be elected to membership pursuant to subdivision six of this section, if, by so doing, the percentage of such non-resident members in the fire company would exceed forty-five per centum of the actual membership of the fire company, provided however, that the provisions of this subdivision shall not apply to the memberships of the Shelter Island Heights fire district, the Cherry Grove fire district, the Fire Island Pines fire district, the Davis Park fire department, and the Cold Spring Harbor fire district in Suffolk county, the New Hampton fire district, the Mechanicstown fire district, the Pocatello fire district, the Washington Heights fire district and the Good Will fire district in Orange county, the Jericho fire district, the Westbury fire district and the Roslyn Rescue Hook and Ladder Company, No. 1 in Nassau county, the Orangeburg fire district in Rockland county, the South Lockport Fire Company and the Terry's Corners volunteer fire company in Niagara County, the Taunton fire district and the Onondaga Hill fire department in Onondaga county, the Town of Batavia fire department in Genesee County, the Schuyler Heights fire district, the Boght Community fire district and the Slingerlands fire district I in Albany county, the town of Providence fire district in Saratoga county, the River Road fire district, No. 3 and the Armor Volunteer Fire Company in Erie county, the

Sir William Johnson Fire Company in Fulton county, the Fort Johnson Fire district in Montgomery county or the memberships of the Millwood fire district, the Purchase Fire District, the North Castle South Fire District, No. 1 in Westchester county, the Thornwood fire company, No. 1 in Westchester county and the Rockland Lake fire district in Rockland county.

(b) Upon application by a fire district or fire company to the state fire administrator, the requirements of paragraph (a) of this subdivision shall be waived, provided that no adjacent fire district objects within sixty days of notice, published in the state register. Any such objection shall be made in writing to the state fire administrator setting forth the reasons such waiver should not be granted. In cases where an objection is properly filed, the state fire administrator shall have the authority to grant a waiver upon consideration of (1) the difficulty of the fire company or district in retaining and recruiting adequate personnel; (2) any alternative means available to the fire company or district to address such difficulties; and (3) the impact of such waiver on adjacent fire districts.

8. The board of fire commissioners by resolution may restrict the membership of volunteer members in any or all of the fire companies of the fire department to residents of the fire district. Any volunteer member who then resides in territory outside the fire district shall cease to be a member of any fire company to which the restriction is applicable unless the resolution provides that his membership shall continue during the existence of any contract for fire protection to such territory by his company or during the period in which he may continue to meet the requirements of subdivision three, five or six.

9. Residents of outside territory which is protected pursuant to a contract for fire protection who have been elected to volunteer membership, and non-residents whose volunteer memberships have been continued or authorized pursuant to subdivision five or six of this section may be elected or appointed to any office in the fire company or fire department and, shall have all the powers, duties, immunities, and privileges of resident volunteer members, except a non-resident of this state whose membership has been continued pursuant to subdivision five

of this section, or a non-resident of this state who was elected to membership pursuant to subdivision six of this section, shall not be considered to be performing any firemanic duty, or to be engaged in any firemanic activity, as a member of the fire company while he or she is outside of this state unless and until he or she has first reported to the officer or firefighter in command of his or her fire department, or any company, squad or other unit thereof, engaged or to be engaged in rendering service outside this state, or has received orders or authorization from an officer of the fire department or fire company to participate in or attend authorized activities outside of this state in the same manner as resident members of the fire company.

10. A person shall not be eligible to volunteer membership in more than one fire company at one time.

11. The term "contract for fire protection" as used in this section means one under which a cash consideration is received by the fire district or by the fire department or a fire company thereof for the furnishing of fire protection to an area outside the fire district. Any such contract shall be deemed in full force and effect for the purposes of this section if negotiations are pending for the renewal thereof.

12. The provisions of this section shall not be deemed to authorize the election of any person as a member of a fire company, or the continuance of membership in a fire company as herein provided, if such election or continuance of membership shall be contrary to the by-laws, rules or regulations of the fire company or of the fire department of the fire district.

13. Any person:

(1) who was recognized prior to the first day of July, nineteen hundred fifty-four, as a volunteer member of any fire company of the fire district by the board of fire commissioners of the fire district or by the officers and members of his fire company, and

(2) who rendered active service with such fire company prior to such date, and

(3) who was, at the time of his or her election to membership, a

resident of the fire district or of territory outside the fire district which was afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, shall for all purposes in law be considered to have been duly elected and appointed to membership in such fire company as of the date of such appointment, if any, and, if none, then as of the date of such election; notwithstanding that there may have been some legal defect in such election, or the proceedings precedent thereto, or a failure of the board of fire commissioners to appoint such member, as provided by the law in force at the time of such election, and the status of such person as a volunteer firefighter as of the date of such appointment or election is hereby legalized, validated, and confirmed. This subdivision shall not apply to a person, if any, whose volunteer membership in a fire company was declared invalid by a court of competent jurisdiction prior to the first day of January, nineteen hundred fifty-five.

14. Any person:

(1) who was recognized on and after the first day of July, nineteen hundred fifty-four and prior to the first day of January, two thousand eleven, as a volunteer member of any fire company of the fire district by the board of fire commissioners of the fire district or by the officers and members of his fire company, and

(2) who rendered active service with such fire company between such dates, and

(3) who was, at the time of his election to membership, a resident of the fire district or of territory outside the fire district which was afforded fire protection by the fire department of the fire district, or any fire company thereof, pursuant to a contract for fire protection, or, who was a nonresident who was elected to membership or who was continued as a member, pursuant to the provisions of subdivision five or six of this section, shall for all purposes in law be considered to have been duly elected and approved, or continued, as a member in such fire company as of the date of such approval, if any, and, if none, then as of the date of such election or, in the case of a continuance, as of the date of the approval, if any, by the board of fire commissioners, and,

if none, as of the date of authorization of continuance by the fire company; notwithstanding that there may have been some legal defect in such election, or the proceedings precedent thereto, or a failure of the board of fire commissioners to approve such member, or approve the continuance of membership of such member, as provided by the law in force at the time of such election or continuance, and the status of such person as a volunteer firefighter as of such date is hereby legalized, validated, and confirmed. This subdivision shall not apply to a person, if any, whose volunteer membership in a fire company was disapproved by the board of fire commissioners or declared invalid by a court of competent jurisdiction prior to the first day of January, two thousand eleven.

15. (a) It shall be an unlawful discriminatory practice for any volunteer fire department or fire company, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firefighters in any fire department or fire company pursuant to this section, because of the race, creed, color, national origin, sex or marital status of any individual, to exclude or to expel from its volunteer membership such individual, or to discriminate against any of its members because of the race, creed, color, national origin, sex or marital status of such volunteer members.

(b) Any person claiming to be aggrieved by an unlawful discriminatory practice pursuant to this section may by himself or his attorney at law make, sign and file with the state division of human rights, a verified complaint which shall set forth the particulars of the alleged unlawful discriminatory practice and contain such other information as the division of human rights may require. The division shall thereupon cause to be made an investigation and disposition of the charges pursuant to the provisions of article fifteen of the executive law.

16. A person who has been convicted of arson in any degree shall not be eligible to be elected or appointed as a volunteer member of a fire company. The membership of any volunteer member of a fire company shall immediately terminate if he is convicted of arson in any degree while a member of a fire company.

17. Upon application by any person for membership in a fire company operating pursuant to this section, the fire chief shall cause the applicant's background to be checked pursuant to section eight hundred thirty-seven-o of the executive law for a criminal history involving a conviction for arson and conviction of a crime which requires the person to register as a sex offender under article six-C of the correction law. Where such criminal history information includes conviction of a crime which requires the person to register as a sex offender under article six-C of the correction law, a fire company shall determine whether or not such person shall be eligible to be elected or appointed as a volunteer member of such fire company. Such determination shall be made in accordance with the criteria established in sections seven hundred fifty-two and seven hundred fifty-three of the correction law.

§ 176-c. Removal of fire commissioners. Any fire commissioner may be removed for dereliction of duty. Dereliction of duty shall include, but not be limited to, excessive unexcused absences from regularly scheduled meetings. These criteria for removal are in addition to the criteria provided in section thirty-six of the public officers law. Any removal pursuant to this section shall take place pursuant to the procedure for removal established in section thirty-six of the public officers law.

§ 176-d. Funding of fire districts. Notwithstanding any other provision of law to the contrary, a fire district may include as part of its budget an appropriation to fund an annual firefighters' inspection-dinner for each fire company within the fire district.

§ 176-e. Training requirements for fire commissioners. Each fire commissioner shall attend and successfully complete a commissioner-specific state-approved training course within two hundred seventy days of the taking of such office. The course will contain training related to legal, fiduciary, financial, procurement, and ethical responsibilities and such other disciplines as may be prescribed

by the state comptroller. Such course shall be prescribed and certified in rules promulgated by the state comptroller. The manner, frequency, and duration of such course shall be established by such rules. Course materials should be made available upon request. When approved by the board of fire commissioners in advance of a commissioner attending such training course, the actual and necessary expenses incurred by a commissioner in successfully completing the training required by this section shall be a charge against the fire district.

§ 177. Powers and duties of fire district treasurer. The fire district treasurer shall be the fiscal officer of the fire district and shall receive and have the custody of the funds of the district and shall disburse the same for the purposes herein authorized when so ordered by resolution of the board of fire commissioners, except that no such resolution of the board of fire commissioners shall be required for the payment of fixed salaries, compensation for services of officers or employees regularly engaged by the fire district at agreed wages by the hour, day, week, month or year unless so required by resolution of the board of fire commissioners adopted at the organization meeting in the month of January, the principal of or interest on obligations issued by the fire district, fixed amounts becoming due on lawful contracts for the purchase of water for fire protection, and amounts which the fire district may be required to pay to the state and local employees' retirement system on account of contributions for past and current services of firefighters. All such disbursements shall be made by check payable to the order of the person or persons entitled thereto. The fire district treasurer shall also be responsible for filing any paperwork necessary to obtain permits or secure any refunds provided pursuant to section three hundred seventy-eight-a of the public authorities law. The board of fire commissioners shall designate in the manner provided by section ten of the general municipal law the depositories in which the fire district treasurer shall, within ten days, deposit and secure all moneys coming into his or her hands by virtue of his or her office.

At the annual organization meeting of the board of fire commissioners of a fire district the fire district treasurer shall account with the

board of fire commissioners for all moneys received and disbursed by him during the preceding fiscal year and shall produce all books, records, receipts, orders, vouchers and cancelled checks or check images as authorized by section ninety-nine-b of the general municipal law respecting the same. At such meeting the fire district treasurer shall file with the board of fire commissioners a statement in writing showing his receipts and disbursements for the preceding fiscal year, which statement shall be in detail and shall be entered in the minutes of the meeting by the fire district secretary, except that the fire district treasurer, if authorized by the board of fire commissioners at a meeting held prior to the annual organization meeting, may within sixty days after the end of the fiscal year, submit to the said board a copy of the annual report required by section thirty of the general municipal law, in lieu of such statement, in which case the fire district treasurer shall account for all moneys received and disbursed by him during the preceding fiscal year, and shall produce all books, records, receipts, orders, vouchers and cancelled checks or check images as authorized by section ninety-nine-b of the general municipal law respecting the same, at the meeting of the board of fire commissioners at which the said annual report is submitted or at the next meeting held subsequent to the submission of the report if not submitted at a meeting of the board, in lieu of producing such records at the annual organization meeting. Such authorization shall remain in effect from year to year until rescinded by the board of fire commissioners. The annual report shall be entered in the minutes of the meeting by the fire district secretary. The board of fire commissioners may require the fire district treasurer to submit to the board of fire commissioners at any time for examination his books, records, receipts, orders, vouchers and cancelled checks or check images as authorized by section ninety-nine-b of the general municipal law.

§ 177-b. Powers and duties of deputy fire district treasurers. The board of fire commissioners of any fire district may appoint a deputy fire district treasurer to hold office until the thirty-first day of December next succeeding his appointment. During the absence or inability to act of the fire district treasurer, or while the office of

fire district treasurer is vacant, the deputy fire district treasurer shall be vested with all of the powers and may perform all of the duties of the fire district treasurer under this chapter or any other law, including the provisions of subdivision four of section one hundred seventy-six of this chapter relating to the giving and filing of an official undertaking. The fire district treasurer shall not be liable for the acts of a deputy fire district treasurer.

§ 177-c. Powers and duties of the director of purchasing. In any fire district in which the office of director of purchasing has been established and a director of purchasing shall have been appointed and qualified, the director of purchasing shall make all purchases and all contracts for supplies, materials and equipment of every nature for the fire district within budgetary appropriations provided therefor. Before making any purchase, the director of purchasing shall comply with such rules and regulations in relation thereto as may be established by resolution of the fire commissioners and such provisions of law as may be applicable thereto, including article five-A of the general municipal law.

§ 178. Powers and duties of fire district secretary. The fire district secretary shall attend all meetings of the board of fire commissioners, act as clerk thereof, and keep a complete and accurate record of the proceedings of each meeting and of all propositions, rules and regulations adopted pursuant to this article. The fire district secretary shall have such additional powers and perform such additional duties as the board of fire commissioners may determine, not inconsistent with law.

§ 178-a. Expenses incurred in attending town and county officers training school. The actual and necessary expenses incurred by a fire district officer or person duly elected as a fire district officer, in attending a course of training for his respective office as provided by the town and county officers training school of the state of New York

for the purpose of improving the administration of municipal affairs in the town and counties of the state, shall be a charge against the fire district of which he is an officer or officer-elect. No person, however, shall be allowed such expenses for attending a regional school unless his district shall be included within the area of such region as established by the board of trustees of the town and county officers training school of the state of New York. The board of fire commissioners, in lieu of auditing and allowing the claim of a fire district officer or officer-elect for actual and necessary expenses for travel in attending any such course of training, may determine by resolution to allow and pay such officer or officer-elect a reasonable mileage allowance for the use of his own automobile for each mile actually and necessarily traveled by him in attending such course of training.

§ 178-b. Expenses of the association of fire districts of the state of New York. The board of fire commissioners of any fire district may determine to expend and raise by taxation annually such sums as may be required toward defraying the actual and necessary expenses of maintaining and continuing the association of fire districts of the state of New York, and any of its activities in this state for the purpose of devising practical ways and means of obtaining greater economy and efficiency in the administration of fire district affairs.

The board of fire commissioners of any fire district may determine to expend and raise by taxation annually such sums as may be required to defray the proportionate share of such fire district to meet the actual and necessary expenses of maintaining and continuing (1) the county association of fire districts or the county association of fire district officers of the fire districts in a county in which all or part of such fire district is located and (2) a regional association of fire districts or a regional association of fire district officers of the fire districts located in an area of adjoining counties, and to maintain and continue any of the activities of any such association, for the purposes of obtaining greater economy and efficiency in the administration of fire district affairs.

§ 178-c. Expenses of fire district officers, officials and employees.

When incurred by the authority of the board of fire commissioners, the actual and necessary expenses, including expenses for travel, of all fire district officers and paid employees of the fire district, and of all paid and volunteer officers of the fire district fire department, incurred and paid by any such fire district officer, paid employee or fire department officer in executing the duties of his office or position shall be a fire district charge. The board of fire commissioners of any fire district, in lieu of auditing and allowing the claim of a fire district officer, paid employee or fire department officer for actual and necessary expenses for travel, may determine by resolution to allow and pay such fire district officer, paid employee or fire department officer a reasonable mileage allowance for the use of his own automobile for each mile actually and necessarily traveled by him in executing the duties of his office or position. In determining the amount of such allowance, the board of fire commissioners may consider the cost of gasoline, but in no event shall such allowance exceed the standard mileage allowance for business-related travel adopted or prescribed for federal income tax purposes. The provisions of this section shall not be deemed to amend, modify or supersede any of the provisions of section one hundred seventy-eight-a of this article and sections seventy-two-g and seventy-seven-b of the general municipal law.

§ 178-d. Costs, expenses and damages a fire district charge in certain cases. Whenever the fire district commissioners or board of fire commissioners of any fire district, or any fire district officers, have been or shall be instructed by a resolution adopted at a regular special meeting of the board of fire commissioners to defend any action brought against them, or to bring or defend an action or proceeding affecting any district property or claim of the district, or involving its rights or interests, or to continue any such action or defense, all their costs and reasonable expenses, as well as all costs and damages adjudged against them, shall be a district charge and shall be levied upon the

taxable property of such district in the same manner as moneys raised for the support of such district. Whenever any fire district commissioner or fire district officer shall defend any action or proceeding, other than a criminal proceeding, hereafter brought against him, arising out of the exercise of his powers or the performance of his duties, provided such commissioner or officer was acting in the discharge of his duties and within the scope of his authority at the time damages were sustained, all his reasonable costs and expenses, as well as all costs and damages adjudged against him, shall be a district charge and shall be levied upon the taxable property of such district in the same manner as money raised for the support of such district, provided (a) such fire district commissioner or fire district officer shall notify the board of fire commissioners in writing of the commencement of such action or proceedings against him within five days after service of process upon him; and (b) the board of fire commissioners shall, at any time during the ten days next following the notice to them of the commencement of such action or proceedings, have the right to designate and appoint the legal counsel to represent such fire district commissioner or fire district officer in such action or proceedings against him, in the absence of which designation and appointment within the time specified such fire district commissioner or fire district officer may select his own legal counsel.

§ 179. Special district elections to vote upon appropriations. The board of fire commissioners upon its own motion may submit, and upon petition, as hereinafter provided, shall cause to be submitted, at a special or annual fire district election, a proposition:

1. (a) To purchase fire apparatus and fire-fighting vehicles for the extinguishment or prevention of fires in said fire district, or motorized equipment for emergency relief squads or fire police squads.

(b) To purchase or install an adequate fire alarm system for the fire district, or to make necessary additions thereto.

(c) To lease, purchase, construct, reconstruct, alter, repair or equip suitable buildings for the preservation, protection and storing of vehicles, apparatus and equipment of the fire district and for the

social and recreational use of the firefighters and residents of the district, and purchase the necessary lands therefor.

(d) To expend in any one fiscal year, or to expend annually, an amount in excess of the amount authorized by subdivision eighteen of section one hundred seventy-six of this chapter, as amended from time to time, to be expended annually without the adoption of a proposition therefor for any of the purposes authorized by the provisions of this article. If the proposition authorizes an annual expenditure, it shall state a maximum amount which may be expended annually in excess of the amount authorized by subdivision eighteen of section one hundred seventy-six of this chapter, as amended from time to time, and such amount may not be exceeded thereafter unless authorized at a fire district election. If a proposition authorizes an annual expenditure, the authorization shall continue in effect until changed by vote of a district election.

(e) To purchase permanent or temporary rights to take water from cisterns, wells and bodies of water and water-courses within the fire district for the purposes, and subject to the limitations, set forth in subdivision twelve-a of section one hundred seventy-six of this chapter.

(f) To purchase or construct fire suction pools in bodies of water and water-courses, fire cisterns and fire wells, including necessary pipes, pumps, hydrants and other facilities in connection therewith, and to purchase and lease necessary real property and rights in land and water therefor, for the purposes, and subject to the limitations, set forth in subdivision twelve-a of section one hundred seventy-six of this chapter.

2. Any sum authorized to be expended, pursuant to subdivision one of this section, shall be raised by tax and shall be spent only during the fiscal year for which such tax is to be levied but nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of expenditures pursuant to section one hundred seventy-six of this chapter. If the proposition is approved at an election held in any fiscal year after September twentieth, or after October twentieth in the case of fire districts located wholly within the county of Westchester, the proposition shall not become effective for the purpose of levying taxes until the first day of September of the fiscal year succeeding the fiscal year in which such proposition is approved.

3. Such petition shall be 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 authentication of nominating petitions, by resident taxpayers owning taxable real property aggregating at least one-quarter of the assessed valuation of all the taxable real property of the district owned by resident taxpayers, as such valuations appear upon the latest completed assessment roll of said town. Notice of such special district election shall be given in the same manner as provided herein for annual district elections. The special election shall be held on a Tuesday, provided that such date is not a public holiday, and shall be conducted and scheduled in a manner that maximizes voter participation. The polls shall remain open for the receipt of ballots from six o'clock in the evening to nine o'clock in the evening and such additional consecutive hours prior thereto as the board of fire commissioners may determine. The secretary of the fire commissioners shall prepare the ballots which shall separately state and number each proposition to be voted upon.

4. Every elector of the town who shall be a registered voter of the town and who shall have resided in the district for the period of thirty days next preceding a special or annual fire district election shall be qualified to vote upon such proposition.

§ 180. Actions and proceedings against fire districts. No action shall be maintained against a fire district upon or arising out of a contract entered into by the fire district, unless the same shall be commenced within eighteen months after the cause of action thereof shall have accrued, nor unless a written verified claim shall have been filed with the fire district secretary within six months after the cause of action shall have accrued, but no such action shall be brought upon any such claim until forty days have elapsed after the filing of the claim in the office of the fire district secretary.

§ 181. Annual budget and levy of taxes. 1. The fiscal year of each

fire district shall begin on the first day of January and end on the thirty-first day of December.

For each fiscal year, the board of fire commissioners of each fire district shall prepare and adopt an annual budget in accordance with this section.

2. (a) On or before the twenty-first day prior to the public hearing required by subdivision three of this section, the board of fire commissioners shall prepare and adopt a proposed budget for the ensuing fiscal year. Within the limitations specified in this article, the proposed budget shall contain detailed estimates in writing of the amount of revenues to be received and the appropriations required for expenditures to be made during such fiscal year for the purposes of such fire district.

(b) On or before the last date provided by law for the adoption of the proposed budget, the board of fire commissioners shall prepare an estimate of the fund balance which shall be affixed to the proposed budget as an appendix thereto. The estimate of fund balance shall include a breakdown of such fund balance estimated for encumbrances, amounts estimated to be expended for the ensuing fiscal year, amounts reserved for stated purposes pursuant to law, including reserve funds established pursuant to the general municipal law, and the remaining unappropriated unreserved fund balance as that term is defined in section one hundred three of this chapter, provided that the remaining estimated unappropriated unreserved fund balance for each fund shall not exceed a reasonable amount, consistent with prudent budgeting practices, necessary to ensure the orderly operation of the fire district and the continued provision of services, taking into account factors including, but not limited to, the size of the fund, cash flows, the certainty with which the amounts of revenues and expenditures can be estimated, and the fire district's experience in prior fiscal years. For those districts which employ the cash basis of accounting, fund balance means the cash surplus estimated to be on hand at the close of the current fiscal year less claims payable therefrom and amounts reserved pursuant to law for stated purposes, including reserve funds established pursuant to the general municipal law.

(c) Upon adoption of the proposed budget by the board of fire commissioners, the proposed budget shall be filed in the office of the fire district secretary and maintained as a public document available for inspection and copying. The fire district secretary shall also reproduce a sufficient number of copies of the proposed budget for distribution upon request to the public and at no cost to the public. In addition, if the fire district maintains an internet website, the fire district secretary shall cause the proposed budget to be posted and maintained on the fire district's website until the day after the public hearing on the proposed budget.

3. (a) The board of commissioners of each fire district shall hold a public hearing during the third week of October to discuss the contents of the proposed budget. The hearing shall be conducted and scheduled in a manner that maximizes participation. Notice of such public hearing shall be published at least once in the official newspaper, or if no official newspaper has been designated, in any newspaper having general circulation in the district. At least five days shall elapse between the date of the first publication of the notice and the date specified for the hearing. The notice of hearing shall state the date, time and the place where the public hearing will be held, the purpose thereof and that a copy of the proposed budget is available at the office of the town clerk or clerks and fire district secretary where it may be inspected by any interested person during office hours. In the case of a fire district that maintains an internet website, the notice of hearing shall also state that the proposed budget is posted on the fire district's website. The town clerk or clerks shall cause a copy of the notice to be posted on the signboard of the town or towns, maintained pursuant to subdivision six of section thirty of this chapter, not later than five days before the day designated for such hearing. The notice shall also be posted on the municipal and/or fire district website or websites, if one exists. At such hearing, any person may be heard in favor of or against the proposed budget as compiled, or for or against any item or items therein contained.

(b) After the public hearing, the board of fire commissioners may adopt changes, alterations and revisions to the proposed budget subject to the requirements of paragraph (a) of subdivision two of this section,

except that the board of fire commissioners shall not add or increase an appropriation to a capital reserve fund. On or before the fourth day of November, the board of fire commissioners shall adopt as the annual budget of the fire district either the proposed budget or the proposed budget as changed, altered or revised after the public hearing. In the event that the board of fire commissioners fails to adopt the annual budget by such date, the proposed budget with such changes, alterations and revisions as shall have been adopted by the board of fire commissioners by that date shall constitute the annual budget of the fire district.

(c) Within three days after the adoption of the annual budget of a fire district, the fire district secretary shall prepare and deliver to the town clerk of each town in which the fire district is located two certified copies of the annual budget. Neither the town board, town supervisor, town clerk nor any other officer or employee of the town shall make any change to the annual budget of the fire district.

4. After the annual budget of a fire district has been affixed to the annual budget adopted by the town board and a certified copy presented to the board of supervisors of the county in which the town is situated as required by section one hundred fifteen of this chapter, the board of supervisors shall assess and levy upon the taxable real property within the several fire districts the amounts to be raised by tax for the purposes of the respective districts as specified in such annual fire district budget and shall cause the amount so assessed and levied to be collected, in the same manner and at the same time and by the same officers as town taxes are assessed, levied and collected. When such taxes are collected, the amount thereof shall be paid to the supervisor of the town and by him immediately paid to the treasurer of the respective fire districts. If a fire district includes taxable property located in more than one town, the amount to be assessed, levied and collected upon the property within each of such towns shall be apportioned in accordance with section eight hundred six of the real property tax law.

5. In any case where a parcel of real property separately assessed on the town assessment roll shall be divided by the line of the fire

district or of any zone established therein as provided in subdivision twenty-seven of section one hundred seventy-six of this chapter, it shall be the duty of the town assessors, after the valuation of the whole of such parcel shall have been fixed, to determine what proportion of such valuation is on account of that part of such parcel lying within the limits of the fire district or of such zone or zones, and the assessors shall enter such proportion separately on the assessment roll. The valuation of the real property lying within such fire district or within such zone or zones, as so fixed and determined, shall be the valuation subject to taxation for the purposes of such fire district or of such zone or zones.

6. The treasurer of each fire district shall prepare and file annually in the office of the town clerk of each town in which any part of such fire district shall be located, and in the office of the state comptroller, a financial statement setting forth in detail the receipts and expenditures of such fire district. Such statement shall be filed in such offices within sixty days after the close of the fiscal year of the fire district.

§ 181-a. Budgetary controls. 1. The fire district treasurer shall maintain a separate account for each appropriation made in the annual budget of the fire district. Each such account shall show the amount appropriated, the several amounts expended from the account, and the unexpended balance of the appropriation.

2. No expenditure shall be made, nor shall any contract which in any manner involves the expenditure of money or the incurring of any pecuniary liability be entered into, unless an amount has been appropriated for the particular purpose and is available for that purpose or has been authorized to be borrowed pursuant to the local finance law. Nothing in this subdivision shall prevent the making of a contract or lease for a term exceeding one year when authorized by law nor shall anything in this subdivision require a fire district which has entered into a contract or lease for a term exceeding one year to pay during the current fiscal year any amounts larger than those which

become due and owing during that year under the terms of such lease or contract.

3. Whenever during a fiscal year it shall appear probable to the fire district treasurer that the moneys available for such year will be insufficient to meet the amounts appropriated, he or she shall forthwith notify the board of fire commissioners of such fact, stating the probable amount of such deficiency. The treasurer may include his or her recommendations as to the action which should be taken. The board of fire commissioners may reduce any appropriation or appropriations so as to prevent the making of expenditures in excess of moneys available. An appropriation shall not be reduced below the minimum amount required by law to be appropriated, nor shall an appropriation be reduced by more than the balance therein less outstanding and unpaid claims chargeable to such appropriation.

4. The board of fire commissioners, during a fiscal year, may make additional appropriations or increase existing appropriations. Moneys therefor may be provided by transfer from the unexpended balance of an appropriation, from unappropriated unreserved fund balance, or unanticipated revenues, or by borrowing pursuant to the local finance law. For the purposes of this subdivision, unappropriated unreserved fund balance or unanticipated revenues shall be available for transfer only to the extent that the total of all revenues recognized or reasonably expected to be recognized in the current fiscal year, including unappropriated unreserved fund balance, exceeds the total of all revenues as estimated in the budget, including appropriated fund balance.

5. Notwithstanding the provisions of subdivision four of this section, grants in aid from the state and federal governments, other gifts which are required to be expended for particular objects or purposes, and insurance proceeds for the loss, theft, damage or destruction of real or personal property, when proposed to be used or applied to repair or replace such property, may be appropriated by the board of fire commissioners at any time for such objects and purposes.

§ 181-b. Independent audit of fire districts. 1. The commissioner of each fire district with revenues of four hundred thousand dollars or more shall obtain an annual audit of its records by an independent certified public accountant or an independent public accountant. The report of such annual audit shall be presented to the fire district board of fire commissioners by such accountant. Such fire district audit shall include, but not be limited to, the district's financial conditions and resources and such other things as the state comptroller may designate. A copy of the audit report in form prescribed by the state comptroller and certified by the accountant, shall be furnished to the commissioners, the town boards served by the district and the state comptroller within one hundred eighty days following the end of the fiscal year audited.

2. The commissioner of each fire district with revenues of less than four hundred thousand dollars shall report the district's financial conditions and resources and such other things as the state comptroller may designate on a form prescribed by him or her. A copy of such report shall be issued to the state comptroller within one hundred eighty days following the end of the fiscal year. The state comptroller may designate an amount below which no report shall be required.

3. On or after January first, two thousand seven, all fire districts subject to the provisions of subdivision one of this section shall utilize a competitive request for proposal process when contracting for such annual audit. In addition, no audit engagement shall be for a term longer than five consecutive years; provided, however, that nothing in this subdivision shall preclude a district, in its discretion, from permitting an independent certified public accountant or an independent public accountant engaged under an existing contract for such services to (i) submit a proposal for such services in response to a request for competitive proposals, or (ii) be awarded a contract to provide such services under a request for proposal process.

4. Notwithstanding the provisions of subparagraph one of paragraph (b) of subdivision four of section thirty-five of the general municipal law,

each fire district shall (i) prepare a corrective action plan in response to any findings contained in the annual external audit report or management letter, or any final audit report issued by the state comptroller, within ninety days of receipt of such report or letter, and (ii) to the extent practicable, begin implementation of such corrective action plan no later than the end of the next fiscal year.

§ 182. Effect of incorporation of village or city including lands within a fire district. 1. Whenever any portion of any fire district heretofore or hereafter established shall be incorporated into the corporate limits of any incorporated village or city, the town board or town boards of the town or towns in which such fire district is located, upon the petition of the resident taxpayers of the incorporated portion of such fire district, shall adopt a resolution changing the boundaries of such district by the exclusion therefrom of the incorporated portion of the district, or, upon the petition of the resident taxpayers of the unincorporated portion of such fire district, shall adopt a resolution changing the boundaries of such district by the exclusion therefrom of the incorporated portion of the district, and thereafter such excluded portions of the district shall not be entitled to protection, nor liable to be assessed or taxed for the fire district purposes of such district, but such portion of the total account of the bonded or other indebtedness of such district as the assessed valuation, according to the last preceding town assessment roll, of the territory so excluded and incorporated in such city or village bears to the assessed valuation, according to the last preceding town assessment roll, of the entire territory of such district before exclusion of such part, shall be assumed and borne by the city or village in which such territory is included and paid over from time to time to the treasurer of such district in accordance with the necessary requirements of the district in paying such indebtedness. Such amounts to be paid by the city or village may be levied with the city tax or village tax upon the parcels of land formerly a part of the fire district, or raised by general taxation, as the village board or governing body of the city may determine. Such petition shall be 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 authentication of a nominating petition, by resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property owned by resident taxpayers of the portion of the district proposed to be continued or by resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property owned by resident taxpayers of that portion of the district incorporated, as such may appear. Valuation for purposes of this section shall be, as such valuations appear upon the latest completed assessment roll of the town or towns in which such district is located.

2. Whenever any fire district is located entirely within the corporate limits of two or more villages by virtue of incorporation of such villages after the establishment of such fire district and the said villages or either of them have not been excluded from the limits or boundaries of such fire district in accordance with the provisions of subdivision one of this section, the town board and the board of fire commissioners of such fire district shall meet together at least sixty days before the annual meeting of the board of supervisors and estimate the amount necessary and proper to be raised for fire district purposes and shall certify the same to the board of supervisors of the county. Such board shall cause the amount thereof to be assessed and levied on the taxable property of such fire district and collected in the same manner and at the same time and by the same officers as town taxes are assessed, levied and collected and, when collected, the amount thereof shall be paid to the supervisor of the town and by him immediately paid to the treasurer of such fire district.

§ 183. Fire alarm districts. Whenever the town board shall have established a fire alarm district pursuant to the provisions of this article, the town board shall prepare, or cause to be prepared, plans, specifications, estimates and a proposed contract for the installation, extension and maintenance of a fire alarm system in such district. Upon the completion of the plans, specifications, estimates and proposed contract therefor, the town clerk shall give notice of a public hearing

thereon in the same manner as provided in this article for notice of hearing upon the creation of such district. At such hearing, the town board shall hear such persons as may be interested in the subject matter thereof and may make such modification and changes in the plans, specifications, estimates and proposed contract as the town board shall deem expedient, and thereupon the town board may adopt or reject same. So far as consistent with the provisions of this section, the town board shall award contracts for the performance of the work and the supplying of materials or may cause the same to be done by day labor under the direction of the town engineer or any other town officer, in the same manner as provided by section one hundred ninety-seven of this chapter for the making of special improvements, and may enter into contracts with persons or corporations for the use of their property in connection with such fire alarm system.

After a public hearing as hereinafter specified, the town board, in addition, shall provide for the furnishing of fire protection within such fire alarm district and for that purpose may contract for a period not exceeding five years with any city, incorporated village, fire district or incorporated fire company maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district. Notice of such hearing shall be published in at least one newspaper having general circulation in the district. Such notice shall specify the time when and place where said hearing will be held, and describe in general terms the proposed contract. The first publication thereof shall be at least ten days prior to the day specified for such hearing. The expense incurred by reason of the establishment of such fire alarm district, the maintenance of said fire alarm system and the contract for fire protection, shall be assessed and levied upon the taxable property in said district and collected in the same manner, at the same time and by the same officers as town taxes are assessed, levied and collected and, when collected, the amount thereof shall be paid to the supervisor of the town. The supervisor shall pay to the city, incorporated village, fire district or incorporated fire company furnishing such fire protection, the expense thereof pursuant to said contract. The expense of the installation or extension of such fire alarm system may be raised, in whole or in part, in the same manner as

the expense of maintenance or may be financed, in whole or in part, pursuant to the local finance law.

If a fire alarm district shall be situated partly in each of two or more towns any action which would be taken by the town board in the case of a district situated in only one town shall be taken by the town boards of the several towns acting jointly by a majority vote of the members of each of such town boards, and the notices of public hearing required by this section shall be given by the town clerks of the several towns acting jointly.

By mutual consent of the contracting parties, and after a public hearing held pursuant to notice in the manner provided in this section in relation to fire protection contracts, any such contract heretofore or hereafter executed may be (1) amended, (2) terminated, or (3) terminated and a new contract may be entered into in lieu thereof, if the town board, after such hearing, shall determine, by resolution, that it is in the public interest so to do. Such notice shall state in general terms the reason why any existing contract is to be amended or terminated, and if a new contract is to be entered into the notice shall also describe the new contract in general terms.

§ 184. Fire protection districts. * 1. Whenever the town board shall have established or extended a fire protection district pursuant to the provisions of this article, the town board shall provide for the furnishing of fire protection within the district and for that purpose may (a) contract with any city, village, fire district or incorporated fire company maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district or (b) may acquire by gift or purchase such apparatus and appliances for use in such district and may contract with any city, village, fire district or incorporated fire company for operation, maintenance, and repair of the same and for the furnishing of fire protection in such district, or both. The contract may also provide for the furnishing of (1) emergency service in case of accidents, calamities or other emergencies in connection with which the services of firefighters would be required and

(2) general ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal law. In the event that the fire department or fire company furnishing fire protection within the district pursuant to contract does not maintain and operate an ambulance then a separate contract may be made for the furnishing within the district of emergency ambulance service or general ambulance service, or both, with any city, village or fire district the fire department of which, or with an incorporated fire company having its headquarters outside the district which, maintains and operates an ambulance subject, however, in the case of general ambulance service, to the provisions of section two hundred nine-b of the general municipal law, or with an ambulance service, certified or registered pursuant to article thirty of the public health law. Any such contract with any such ambulance service permitted herein shall be subject to the provisions of this section.

* NB Effective until April 9, 2031

* 1. Whenever the town board shall have established or extended a fire protection district pursuant to the provisions of this article, the town board shall provide for the furnishing of fire protection within the district and for that purpose may (a) contract with any city, village, fire district or incorporated fire company maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district or (b) may acquire by gift or purchase such apparatus and appliances for use in such district and may contract with any city, village, fire district or incorporated fire company for operation, maintenance, and repair of the same and for the furnishing of fire protection in such district, or both. The contract may also provide for the furnishing of (1) emergency service in case of accidents, calamities or other emergencies in connection with which the services of firefighters would be required and (2) general ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal law. In the event that the fire department or fire company furnishing fire protection within the district pursuant to contract does not maintain and operate an ambulance then a separate contract may be made for the furnishing within the district of emergency ambulance service or general ambulance service, or both, with any city, village or fire district the fire department of which, or with an

incorporated fire company having its headquarters outside the district which, maintains and operates an ambulance subject, however, in the case of general ambulance service, to the provisions of section two hundred nine-b of the general municipal law, or with an ambulance service, certified or registered pursuant to article thirty of the public health law, which is not organized under the provisions of section two hundred nine-b of the general municipal law. Any such contract with any such ambulance service permitted herein shall be subject to the provisions of this section.

* NB Effective April 9, 2031

1-a. (a) Except as provided in paragraph (b) of this subdivision, prior to commencing the negotiation process for such contract with an incorporated fire company, the incorporated fire company shall file with the town board a statement itemizing the estimated costs of the incorporated fire company attributable to the provision of services under the prospective contract. The estimated costs attributable to the provision of services under the prospective contract itemized in the statement shall include, at a minimum, those, if any, for: supplies; materials; operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs. If the fire company is required to prepare any of the following documents, copies shall be included with the statement:

(1) the fire company's most recent annual report of directors pursuant to section five hundred nineteen of the not-for-profit corporation law;

(2) the fire company's most recent verified certificate pursuant to subdivision (f) of section fourteen hundred two of the not-for-profit corporation law;

(3) the fire company's most recent internal revenue service form 990; and

(4) the fire company's most recent annual report pursuant to section thirty-a of the general municipal law.

(b) The provisions of paragraph (a) of this subdivision shall not apply to the renewal of a contract when the contract is deemed renewed in accordance with subdivision four of this section. Upon good cause

shown, the town board may, by resolution, waive in whole or in part the requirement that the fire company file the statement, and copies of documents, required by paragraph (a) of this subdivision.

2. The contract shall not be entered into until a public hearing has been held by the town board. Notice of the hearing shall be published at least once in at least one newspaper having general circulation in the district. The notice shall specify the time when and place where the hearing will be held, and describe in general terms the proposed contract. The first publication shall be at least ten days prior to the day specified for the hearing. Before any contract to furnish general ambulance service by an ambulance service is entered into pursuant to this section, and before any public hearing is conducted as herein provided, the consent of such ambulance service to furnish general ambulance service shall be obtained. Such consent shall be evidenced by a copy of a resolution certified by the secretary of a voluntary ambulance service or the chief executive officer of a professional ambulance service.

3. Except as provided in subdivision four of this section, the term of the contract shall be for a definite period of time, but in no event shall the term exceed five years. The contract year or years in all such contracts entered into after the year nineteen hundred sixty shall terminate on December thirty-first.

4. Instead of being for a definite term as provided in subdivision three, the contract may be for an original term of one calendar year or less and provide that it shall be deemed renewed on the same basis each year thereafter for a further term of one full calendar year without any further public hearing unless one of the contracting parties shall notify the other in writing on or before the twentieth day of August that it elects to terminate the contract on December thirty-first in that year. The term of any such contract, including renewals, shall not exceed five years, but the contract may provide that there shall be less than four such renewals. If the city, village or fire district, fire department or fire company which is to furnish the service under such a contract is not a fully paid department or company, the city, village or

fire district governing board, upon the request of the department or company, shall terminate the contract as provided in this subdivision. Any such contract may provide that in the month of July of each year in which such a renewal could occur the town clerk of the town in which the fire protection district or the major portion thereof is located shall notify the secretary of the fire department, fire company or ambulance service which is to furnish the service under the contract that the contract shall be deemed renewed on the same basis for a further full term of one calendar year unless one of the contracting parties shall notify the other in writing on or before the twentieth day of August that it elects to terminate the contract on December thirty-first in such year.

5. The contract shall specify a definite sum to be paid each year for all of the services to be rendered thereunder.

6. The amount which is to be paid each year pursuant to any contract entered into pursuant to the provisions of this section, together with all other expenses necessarily incurred or occasioned by reason of the establishment or extension of the fire protection district, shall be assessed and levied upon the taxable property in the district and collected in the same manner, at the same time and by the same officers as town taxes are assessed, levied and collected and, when collected, the amount thereof shall be paid to the supervisor of the town. The supervisor shall pay to the city, village, fire district, incorporated fire company or ambulance service furnishing such service the amount to be paid each year for the service in one sum or in installments as the contract may provide.

7. If a fire protection district shall be situated partly in each of two or more towns any action which would be taken by the town board in the case of a district situated in only one town shall be taken by the town boards of the several towns acting jointly by a majority vote of the members of each of such town boards, and the notice of public hearing required by this section shall be given by the town clerks of the several towns acting jointly.

8. By mutual consent of the contracting parties, and after a public hearing held pursuant to notice in the manner aforesaid, any such contract heretofore or hereafter executed may be (1) amended, (2) terminated, or (3) terminated and a new contract may be entered into in lieu thereof, if the town board, after such hearing, shall determine, by resolution, that it is in the public interest so to do. Such notice shall state in general terms the reason why any existing contract is to be amended or terminated, and if a new contract is to be entered into the notice shall also describe the new contract in general terms.

9. The term "fire protection," as used in this section, includes inspections of buildings and properties in the fire protection district for the purposes specified in and as authorized by sections eight hundred seven-a and eight hundred seven-b of the education law, subdivision four of section three hundred three of the multiple residence law, and section one hundred eighty-nine of the town law.

10. The provisions of this section shall not be deemed to have amended subdivision two of section two hundred nine-b or section two hundred nine-d of the general municipal law, or any other general, special or local law requiring the consent of a fire department, fire company or an emergency rescue and first aid squad to the entering into of a contract for services to be performed by such department, company or squad.

§ 184-a. Contract for water supply outside of fire districts. The town board of any town, on behalf of a fire protection district or fire alarm district situated therein, or on behalf of the area of the town outside of any village, fire district, fire protection district or fire alarm district, which area is hereinafter referred to as the "unprotected area", may contract for a supply of water and for the furnishing, erection, maintenance, care and replacement of fire hydrants, including the erection and maintenance of markers therefor, and the removal of snow and ice to provide access thereto, for fire purposes for a period not exceeding five years.

Before a contract shall be entered into pursuant to the authority

given in this section, the town board shall hold a public hearing in the district or unprotected area or at such other place within the town as the town board shall designate. Notice of the hearing shall be published at least once in at least one newspaper having general circulation in the district or unprotected area, the first publication thereof to be at least ten days prior to the day specified for the hearing. The notice shall specify the time when and place where the hearing will be held, and shall describe in general terms the proposed contract. The amount of any contract that may be entered into pursuant to the provisions of this section together with all other expenses necessarily incurred or occasioned thereby, shall be assessed and levied upon the taxable real property in the district or unprotected area and collected in the same manner, at the same time and by the same officers as town taxes are assessed, levied and collected and, when collected, the amount thereof shall be paid to the supervisor of the town. The supervisor shall pay to the person, company or corporation entitled thereto the amount specified in the contract.

If a fire protection district or fire alarm district shall be situated partly in each of two or more towns any action which would be taken by the town board in the case of a district situated in only one town shall be taken by the town boards of the several towns acting jointly by a majority vote of the members of each of such town boards, and the notice of public hearing required by this section shall be given by the town clerks of the several towns acting jointly.

§ 184-c. Water supply outside of fire districts. The town board of any town, on behalf of a fire protection district or fire alarm district situated therein, or on behalf of the area of the town outside of any village, fire district, fire protection district or fire alarm district, which area is hereinafter referred to as the "unprotected area", (1) may purchase permanent or temporary rights to take water from cisterns, wells, and bodies of water and water-courses within the fire protection district, fire alarm district or unprotected areas, or may lease such rights, and (2) may construct and maintain, fire suction pools in bodies of water and water-courses, fire cisterns and fire wells, including

necessary pipes, pumps, hydrants and other facilities in connection therewith and may purchase and lease necessary real property and rights in land and water therefor, in order to provide a supply of water for any area of such district or unprotected area which does not have an adequate and available supply or which cannot be suitably supplied by contract pursuant to section one hundred eighty-four-a of this chapter.

Before making any purchase or lease of water rights or constructing fire suction pools, fire cisterns and fire wells or acquiring any real property and rights in land and water therefor, the town board (1) shall secure the written statement of the fire chief, or chief engineer, of the fire department or fire company, if any, furnishing fire protection in the district or unprotected area that such sources of water supply are adequate and that such fire suction pools, fire cisterns and fire wells are located properly for fire-fighting purposes and (2) shall hold a public hearing in the district or unprotected area. Notice of the hearing shall be published at least once in at least one newspaper having general circulation in the district or unprotected area, the first publication thereof to be at least ten days prior to the day set for the hearing. The notice shall specify the time when and place where the hearing shall be held, and shall describe in general terms what is proposed to be done pursuant to the provisions of this section.

The water and improvements shall be used for fire-fighting purposes only and such water shall not be sold. The fire suction pools, fire cisterns and fire wells constructed and maintained for the purposes of any such district or unprotected area shall be fenced or covered to prevent trespass by children and domestic animals. Any such improvement shall be located upon real property within the fire protection district, fire alarm district, or unprotected area, which has been acquired by gift, purchase or lease, or upon which an easement has been acquired, by the town board in the name of the town for the purposes of any such district or area, except such portions of the improvement which are located within the bounds of public highways, roads or streets with the consent of the state or local official charged with the supervision of the highway, road or street. No officer or employee of the town shall be liable personally for any damages to persons or property resulting from

the maintenance of any such improvement on behalf of any such district or unprotected areas, except such damages as result from his wilful negligence or malfeasance. The town board may purchase insurance to protect the district or unprotected area from liability for damage to persons and property resulting from the maintenance of any such improvement for the district or unprotected area. Expenditures for any such purposes, and any liabilities for any such damage, shall be raised only upon the taxable real property in the district or unprotected area and shall be assessed, levied and collected in the same manner, at the same time, and by the same officers as town taxes are assessed, levied and collected, and, when collected, the amount thereof shall be paid to the supervisor of the town. The supervisor shall disburse such moneys for the purposes aforesaid. Moneys shall not be borrowed to finance the cost of any expenditure made pursuant to this section.

If a fire protection district or fire alarm district shall be situated partly in each of two or more towns any action which would be taken by the town board in the case of a district situated in only one town shall be taken by the town boards of the several towns acting jointly by a majority vote of the members of each of such town boards, and the notice of public hearing required by this section shall be given by the town clerks of the several towns acting jointly.

If, after proceeding pursuant to this section, an adequate supply of water for fire-fighting purposes becomes available for such area, or if a suitable supply may be obtained therefor by contract pursuant to section one hundred eighty-four-a of this chapter, the town board, nevertheless, may continue to act in relation to any such district or unprotected area pursuant to this section.

§ 186. Savings clause. 1. Except as otherwise provided by law, fire districts now existing shall continue to exist as now established, subject to the provisions of this chapter. Except as hereinafter provided no fire district officers shall be appointed or elected as successors to such officers holding office at the time this article shall take effect.

2. Nothing herein contained shall be construed to require the election of fire district commissioners or a fire district treasurer in any water district, highway district, town fire district, water supply district or school district in which fire protection was provided on June first, nineteen hundred thirty-three, pursuant to the provisions of article fourteen of chapter sixty-three of the laws of nineteen hundred nine, entitled "An act relating to towns, constituting chapter sixty-two of the consolidated laws," and acts amendatory thereof and supplemental thereto, if there were no fire district commissioners in or for such district on the said first day of June, nineteen hundred thirty-three; but in each town fire district established pursuant to the provisions of chapter two hundred twenty-six of the laws of nineteen hundred sixteen, in which there were town fire commissioners on the first day of June, nineteen hundred thirty-three, five fire district commissioners but no treasurer shall be elected on the fifth day of December, nineteen hundred thirty-three, upon the notice, in the manner and for the terms specified in this section for election of fire district commissioners on such date, and one commissioner shall be elected annually thereafter in the manner provided in this article. The fire district commissioner so elected shall have and may exercise all the powers conferred by this chapter or any other law upon the commissioners of fire districts but the supervisor of the town shall act as the treasurer and the town clerk as secretary of such fire district; provided, however, that in any such town fire district the fire district commissioners may submit at a special fire district election held prior to the first day of October in any year, or at any annual fire district election, the proposition "Shall the fire district treasurer be elected and the fire district secretary be appointed?" If a majority of the votes cast on such proposition submitted as herein provided be in the affirmative, a fire district treasurer shall be elected at the next annual fire district election and a fire district secretary shall thereafter be appointed, as provided in this article. The terms of office of such fire district treasurer and such fire district secretary shall commence on the first day of January next succeeding the date of such annual election. In a town fire district established pursuant to the provisions of chapter two hundred twenty-six of the laws of nineteen hundred sixteen in which

there were no town fire commissioners on June first, nineteen hundred thirty-three, the town board shall have and may exercise all the powers conferred upon fire district commissions pursuant to this chapter or any other law except that the supervisor of the town shall act as treasurer of the district and chairman of the commission and the town clerk shall act as secretary thereof. The supervisor whenever acting as treasurer of the fire district shall not be required to give the additional undertaking provided in subdivision four of section one hundred seventy-six but the undertaking executed pursuant to section twenty-five of this chapter shall include and cover the moneys and property of the fire district coming into his hands as treasurer.

3. Every incorporated fire company, and every town fire company established and existing on June first, nineteen hundred thirty-three, pursuant to sections three hundred ten, three hundred eleven and three hundred twelve of article fourteen of chapter sixty-three of the laws of nineteen hundred nine, entitled "An act relating to towns, constituting chapter sixty-two of the consolidated laws," and acts amendatory thereof and supplemental thereto, which shall have its headquarters in any water district, water supply district, or highway district, and providing fire protection in such district on the first day of June, nineteen hundred thirty-three, shall continue to exist and may provide fire protection in such districts or any of them, and each such district shall constitute a fire protection district and be subject to all of the provisions of this chapter relating to fire protection districts, so far as the same do not conflict with the provisions of this subdivision. However, any water district, governed by district commissioners, providing fire protection pursuant to this subdivision shall constitute and be a fire district, with all powers and limitations of a fire district so far as the same do not conflict with the provisions of this subdivision. The town board of the town in which any such district is located may contract with any such incorporated fire company or town fire company for the furnishing of fire protection within such district and the amount of any such contract shall be assessed and levied upon the taxable property in such district and collected in the same manner as town charges are assessed, levied and collected. The funds so collected shall be paid by the collector to the supervisor of the town who shall apply the same in

payment of the amount of such contract. The board of water commissioners, in the case of water districts to which the provisions of article thirteen of this chapter apply, or the town board of the town in the case of the other districts hereinbefore specified, shall have and may exercise any and all of the powers and duties of fire district commissioners as provided in subdivisions nine to twenty-five inclusive of section one hundred seventy-six of this chapter, and may purchase, equip and operate an ambulance for the benefit of the residents of the district and may, upon its own motion and shall, upon petition, cause to be submitted at a special or annual district election a proposition in the manner and for any of the purposes specified in section one hundred seventy-nine of this chapter. The board of water commissioners, if there be any, in the case of water districts, and the town board in the case of other districts shall annually prepare and file with the supervisor and town clerk of each town in which such district is located, an itemized and verified statement of the amount of moneys necessary to be raised in such district for fire purposes and the amount thereof shall be assessed and levied on the taxable property of such district, and collected, all in the manner provided in section one hundred eighty-one of this chapter. An annual financial statement setting forth in detail the receipts and expenditures of such district for fire purposes shall be filed by the board of water commissioners, if there be any, in the case of water districts and by the town board, in the case of all other districts, in the manner provided in section one hundred eighty-one.

4. Nothing herein contained shall affect or impair the validity or restrict the exercise of any power or limit the obligation or liability conferred or imposed by law upon any now existing fire district or the officers thereof or the qualified voters or electors thereof, except to the extent specified in this chapter.

§ 187. Exclusion of a fire district from a water supply district. 1. Petition. Whenever a fire district shall be located wholly within the boundaries of a water supply district which shall have no bonded indebtedness, a written petition as hereinafter provided may be presented to the town board of the town in which the water supply

district is located asking for the exclusion of the area included in the fire district from the water supply district. Such petition shall be signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided in the election law for the authentication of nominating petitions, by resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the fire district owned by resident taxpayers, as such valuations appear upon the latest completed assessment roll of said town. Such petition shall have endorsed thereon the approval of a majority of the board of fire commissioners of such fire district. The town board shall hold a public hearing upon such petition within the limits of the water supply district and shall cause a notice thereof to be published and posted in the same manner provided for hearings held pursuant to section one hundred seventy-one hereof. Such notice shall contain a description of the fire district referred to in the petition and specify the time when and the place where the town board will meet to consider such petition and to hear all the persons interested in the subject concerning the same. After a hearing held upon notice as provided hereinbefore, and upon the evidence given thereat, the town board shall determine whether it is in the public interest to grant the relief sought. If it is determined that it be not in the public interest to grant the relief sought, it shall deny the petition, but if it is determined that it be in the public interest, it may grant the relief sought by the petition.

2. Filing of determination. Whenever the town board shall adopt a resolution excluding the area included in a fire district from a water supply district, the town clerk shall cause a certified copy of such resolution to be duly recorded in the office of the clerk of the county in which such fire district is located and a certified copy of such resolution to be filed with the secretary of the board of fire commissioners of said district. When so recorded such resolution shall be presumptive evidence of the regularity of the exclusion of such fire district from the water supply district. The expense of such recording shall be a charge against the fire district. The said determination shall be final and conclusive unless a proceeding for review in the manner provided by article seventy-eight of the civil practice law and

rules has been commenced within thirty days from the time of filing thereof.

3. Liability for indebtedness; apportionment of liabilities and property. If the town board shall grant a petition for the exclusion of the territory of a fire district from a water supply district and the territory included within the boundaries of the fire district be so excluded, such territory within such fire district shall not be relieved from bearing its proportionate share of any liability or indebtedness incurred for water supply district purposes while such territory was a part of such water supply district, and until such liability shall have been discharged or such indebtedness paid the proportionate share thereof to which such territory would be liable if it had not been excluded from the water supply district, in accordance with assessed valuations as appear on the latest completed assessment roll of said town, shall be added to the annual budget of the fire district by the town board.

The proportion of the liability created or the indebtedness incurred in behalf of the water supply district and payable by a tax against the property within the fire district which shall be assumed by the fire district and the apportionment of the personal and real property belonging to the water supply district shall be determined according to the relative assessed valuation of the personal and real property in that portion of the water supply district without the fire district, and that portion within the fire district, in the following manner: The town board of the town when acting as a board for the water supply district, exclusive of a member who may reside in the fire district and the board of commissioners of the fire district being unable to agree within six months after the exclusion of the fire district from the water supply district becomes final upon the proportion of the debt and the apportionment of the personal and real property, then the supreme court shall have power to determine such division and to enforce such award, division and determination as shall be made in the premises in a suit in equity to be brought in the name of either of said parties.

§ 188. Use of surplus town moneys for purchase of fire apparatus for use in town fire districts. The town board in a town in which a town fire district has been established pursuant to the provisions of chapter two hundred and twenty-six of the laws of nineteen hundred sixteen may authorize the expenditure of surplus moneys of the town for the purchase of apparatus for the extinguishment and the prevention of fires in such town fire district.

§ 189. Fire inspection of property in contract areas. The chief officer of the fire department or fire company which is to furnish fire protection service in a fire district, fire alarm district or fire protection district under a contract for fire protection entered into pursuant to the provisions of subdivision twenty-two of section one hundred seventy-six, section one hundred eighty-three or section one hundred eighty-four of this chapter may inspect (1) any public building and (2) with the consent of the owner, any privately-owned building, located within the fire district, fire alarm district or fire protection district or the portion thereof required to be protected under such contract, for fire hazards, or such chief officer may delegate such power of inspection to an officer or member of such department or company.

The term "building," as used in this section does not include a multiple dwelling which may be inspected by such fire department or company under and pursuant to the provisions of subdivision four of section three hundred three of the multiple residence law.

The failure of any such officer or member to discover and properly report any such fire hazards or his or her neglect or omission to perform such duties shall not subject him or her, his or her fire department, fire company, or the city, village, fire district or town in which or of which he or she is a firefighter to any civil or other liability. Any such fire officer or member shall not be liable civilly for any act or acts done by him or her as a firefighter in the performance of such duties, except for wilful negligence or malfeasance, but the provisions of this section shall not relieve any such city,

village, fire district, town, or fire company from liability, if any, for the negligent or wrongful acts of the officer or member in the actual performance of such duty.

ARTICLE 11-A

JOINT FIRE DISTRICTS IN TOWNS AND VILLAGES

Section 189-a. Procedure.

189-b. Sale of firehouse, land and apparatus.

189-d. Establishment of district.

189-e. Management of affairs of joint fire districts.

189-f. Powers of board of commissioners.

189-g. Appointment of district treasurer.

189-h. Annual statement of expenditures and levy of taxes.

189-i. Fire protection.

§ 189-a. Procedure. 1. The town board of a town or the town boards of more than one town, and the board of trustees of an incorporated village or the boards of trustees of more than one incorporated village, as defined in the village law, located in said town or towns are hereby authorized to establish in such town or towns and village or villages a joint fire district for the purposes hereinafter stated and in the manner hereinafter provided, provided all of the territory in such joint fire district shall be contiguous.

2. (a) Whenever it shall appear to the participating municipalities to be in the public interest, the town board of such town and the board of trustees of such village shall hold a joint meeting at one location within the proposed joint district for the purpose of jointly proposing the establishment of a joint fire district.

(b) If at such joint meeting it is determined by a majority vote of each board to make such proposal, each such board shall, within thirty days thereafter, hold a joint public hearing at one location within the proposed joint district upon such proposal and shall cause notice of such public hearing to be published in a newspaper having general circulation in such town and village, at least once, and posted in five

public conspicuous places in the town outside such village and in five public conspicuous places in the village, not less than ten days before the date of the hearing. In the event that the district maintains a website, one of the posting requirements may be fulfilled by posting such information on the website. Notice of such hearing also shall be served by such clerk upon the members of the town board and the members of the board of trustees of the village, by mail addressed to such members at their last known post office addresses, at least ten days before the date of the hearing. Such notice shall contain a brief description of the boundaries of the proposed joint fire district and of the objects and purposes for which it is proposed that a new district be created, and shall specify the single time when and place where such town and village boards will jointly meet to consider the proposal and to hear all persons interested in the establishment of the district. If, upon the establishment of a joint fire district, the joint fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the notice of hearing shall so specify and contain a statement of the estimated annual cost of the service award program to the joint fire district; provided, however, that if, upon the establishment of a joint fire district, the joint fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the resolutions establishing the district shall be submitted to referendum in each such town and village in the manner provided by article seven of this chapter or article nine of the village law, respectively.

(c) After such hearing, and upon evidence given thereat, and after considering the objections, if any, the town board of such town and the board of trustees of such village shall determine whether it is or is not in the public interest to establish such joint fire district, and, if it is determined to be in the public interest, subject to permissive referendum, such town board and board of trustees shall, by resolution, duly adopted by a majority of each board, establish such joint fire district; provided, however, that if, upon the establishment of a joint fire district, the joint fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the resolutions establishing the district shall

be submitted to referendum in each such town and village in the manner provided by article seven of this chapter or article nine of the village law, respectively.

(d) In all respects the provisions of article eleven of this chapter, not inconsistent herewith, shall apply to the establishment, operation and management of any joint fire district provided for by this section.

(e) In all respects the provisions of this article, not inconsistent herewith, shall apply to the operation and management of any joint fire district heretofore established pursuant to the unconsolidated laws.

3. If, subsequent to the joint meeting for the establishment of a joint fire district as provided in subdivision two of this section and before the establishment of such district, it is desired to include in such proposed district any portion of the territory of an adjoining town, the procedure shall be as follows:

(a) The town board of the town or towns and the board or boards of trustees of the villages which held such joint meeting and the town board of each adjoining town may hold a joint meeting for the purpose of jointly proposing the inclusion of the territory of such adjoining town in the proposed joint fire district.

(b) If at such meeting it is determined by a majority vote of each board to make such proposal, each such board shall, within thirty days thereafter, hold a joint public hearing upon such proposal and shall cause notice of such public hearing to be published in a newspaper having general circulation in each such town and village, at least once, and posted in five public conspicuous places in each such town outside each such village and in five public conspicuous places in each such village, not less than ten days before the date of the hearing. Notice of such hearing also shall be served by such clerk upon the members of the town board or boards and the members of the board of trustees of the village or villages, by mail addressed to such members at their last known post office addresses, at least ten days before the date of the hearing. Such notice shall contain a brief description of the boundaries of the proposed joint fire district and of the objects and purposes for which it is proposed that a new district be created, and shall specify the time when and place where such town and village boards will meet to consider the proposal and to hear all persons interested in the

establishment of the district.

(c) After such hearing, and upon evidence given thereat, and after considering the objections, if any, the town boards of such town and the board of trustees of such villages, shall determine whether it is in the public interest to establish such joint fire district and if it is determined to be in the public interest, subject to permissive referendum, such town boards and boards of trustees shall by resolution, duly adopted by a majority of each board, establish such joint fire district.

(d) In all respects the provisions of article eleven of this chapter, not inconsistent herewith, shall apply to the establishment and the operation and management of any joint fire district provided for by this section.

4. Any joint fire district formed pursuant to the provisions of this article may be extended from time to time to include contiguous territory except contiguous territory in a city. The procedure for extending the district shall be as follows:

(a) The town board of each town and the board of trustees of each village in which any portion of the district as proposed to be extended is located shall hold a joint meeting at one location for the purpose of jointly proposing the extension of the district.

(b) If at such meeting it is determined by a majority vote of each board to make such proposal, each such board shall, within thirty days thereafter, hold a joint public hearing at one location upon such proposal and shall cause notice of such public hearing to be published in a newspaper having general circulation in each affected town and village, at least once, and posted in five public conspicuous places in each affected town outside any affected village and in five public conspicuous places in each affected village, not less than ten days before the date of the hearing. Notice of such hearing also shall be served by such clerk upon the members of each town board and the members of each village board of trustees, by mail addressed to such members at their last known post office addresses, at least ten days before the date of the hearing. Such notice shall contain a brief description of the boundaries of the proposed extension of the joint fire district and of the objects and purposes for which it is proposed that the district

be extended and shall specify the single time when and place where such town and village boards will jointly meet to consider the proposal and to hear all persons interested in the extension of the district. If, upon the extension of a joint fire district, the joint fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the notice of hearing shall so specify and contain a statement of the estimated annual cost of the service award program to the joint fire district; provided, however, that if, upon the extension of a joint fire district, the joint fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the resolutions establishing the districts shall be submitted in each such town and village in the manner provided by article seven of this chapter or article nine of the village law, respectively.

(c) After such hearing, and upon evidence given thereat, and after considering the objections, if any, the town board of each such affected town and the board of trustees of each such affected village shall determine whether it is or is not in the public interest to extend such joint fire district, and, if it is determined to be in the public interest, subject to permissive referendum, such town board and board of trustees shall, by resolution, duly adopted by a majority of each board, extend such joint fire district; provided, however, that if, upon the extension of a joint fire district, the joint fire district would become the sponsor of a service award program pursuant to section two hundred sixteen-b of the general municipal law, the resolutions establishing the districts shall be submitted in each such town and village in the manner provided by article seven of this chapter or article nine of the village law, respectively.

(d) A signed or certified copy of the determination extending the district shall be recorded in the office of the county clerk and, when so recorded, shall be presumptive evidence of the regularity and validity of the extension of the district and of the acts of the town board or boards and village board or boards of trustees relating thereto. A review of such determination may be had in the manner provided in section one hundred seventy-three of this chapter, except that the undertaking for costs and expenses shall run to such town or towns and village or villages and apply to the costs and expenses of

each.

(e) In all respects the provisions of article eleven of this chapter, not inconsistent herewith, shall apply to the extension, operation and management of any joint fire district provided for by this section.

§ 189-b. Sale of firehouse, land and apparatus. The board of trustees of a village or the commissioners of a fire district, all of the territory of which is embraced within the boundaries of a joint fire district established or extended pursuant to the provisions of this article, may by resolution authorize the sale or transfer of a firehouse (including the plot of land on which the building or fire district is situated), fire apparatus and fire equipment owned by such village or by such fire district to said joint fire district with or without consideration and, upon such terms and conditions as to such board of trustees or board of commissioners may deem fitting and proper.

§ 189-d. Establishment of district. The clerk of such town or village designated by the town and village boards participating in the determination to establish or extend any joint fire district pursuant to this article shall, within ten days, cause a certified copy of the determination establishing or extending the district to be filed in the state department of audit and control at Albany, New York, and shall, within ten days, cause a certified copy of such determination to be recorded in the office of the county clerk, and when so recorded it shall be presumptive evidence of the regularity and validity of the creation of the district and of the acts of such boards relating thereto. A review of such determination may be had in the manner provided in section one hundred seventy-three of this chapter, except that the undertaking for costs and expenses shall run to such town and village and apply to the costs and expenses of each.

§ 189-e. Management of affairs of joint fire districts. Subject to the restrictions hereinafter established, the property and affairs of joint fire districts shall be under the management and control and in charge

of a board of not less than three and not more than seven commissioners, appointed by the town board of the town or the town boards of the towns and the board of trustees of the village or the boards of trustees of the villages in joint session as hereinafter provided, or elected as provided in article eleven of this chapter, as may be determined by resolution adopted at the meeting for the establishment of the district in the same manner as the resolution for the establishment of the district is adopted; or as may be determined by a joint consolidation agreement or elector initiated consolidation plan in accordance with article seventeen-A of the general municipal law. In case it is determined that the commissioners shall be selected in the manner provided by article eleven of this chapter, the appointments as provided for in subdivision one of section one hundred seventy-four of this chapter shall be made by the town board, or, if the district includes territory in more than one town, by the town board of all of the towns at a joint session held at one location within the district and thereafter elections shall be held as provided in article eleven of this chapter except that the terms of the commissioners shall be as hereinafter provided. They shall be residents of such district and in case selection is made as provided in article eleven of this chapter there shall be no other residential requirement, but otherwise if there are an even number of commissioners not more than half at any time shall be residents of such village or villages and if there are an odd number, the number that are residents of such village or villages shall not exceed the number that are residents of such town or towns by more than one. First appointments hereunder shall be made in the following manner: If there be three commissioners, the term of one shall expire one year, of another two years and of the other three years from the then next ensuing thirty-first day of December, and thereafter one shall be appointed annually for a term of three years from the date of the expiration of the term of his predecessor. If there be four commissioners, the term of one shall expire one year, of another two years, of another three years, and of the other four years from the then next ensuing thirty-first day of December, and thereafter one shall be appointed annually for a term of four years from the date of the expiration of the term of his predecessor. If there be five commissioners, the term of one shall expire one year, of another two

years, of another three years, of another four years, and of the other five years from the then next ensuing thirty-first day of December, and thereafter one shall be appointed annually for a term of five years from the date of the expiration of a term of his predecessor. If there be six commissioners, the term of one shall expire one year, of another two years, of another three years, of another four years, and of the remaining two, five years from the then next ensuing thirty-first day of December, and thereafter appointments shall be made for a term of five years from the date of the expiration of the term of each commissioner. If there be seven commissioners, the term of one shall expire one year, of another two years, of another three years, and of two of the others four years, and of the remaining two, five years from the then next ensuing thirty-first day of December, and thereafter appointments shall be made for a term of five years from the date of the expiration of the term of each commissioner. Such board of commissioners may employ necessary labor and assistants, at a compensation approved by such boards in joint session. Such commissioners shall receive no compensation for their services, but they and their employees shall be allowed and paid their necessary expenses, payable as expenses of the district.

§ 189-f. Powers of board of commissioners. The board of commissioners shall have and exercise, with respect to such district, the applicable powers and duties of a board of fire district commissioners as prescribed by the town law, with respect to similar functions of a fire district in a town and all of the provisions of article eleven of this chapter shall be applicable to a joint fire district created pursuant to this article. Such powers and duties of the board of district commissioners are subject to the following restriction:

No real property or easement therein shall be acquired by the board of commissioners without the approval of the village board or boards and the town board or boards of each village or town in which any portion of the district is situated. But this restriction shall not apply if, at the meeting for the establishment of any such district hereafter established, a resolution to that effect is adopted in the same manner

as the resolution for the establishment of the district is adopted.

§ 189-g. Appointment of district treasurer. The board of fire commissioners shall appoint to serve during its pleasure, a district treasurer, who shall receive and have the custody of the funds of the district and shall disburse the same for the purposes herein authorized on the order of the board of fire commissioners. The board of fire commissioners also shall appoint a district secretary, who shall have the custody of all the records, books and papers of the district. The secretary shall attend all meetings of the board of fire commissioners and act as clerk thereof, shall keep a complete and accurate record of the proceedings of each meeting; and shall have and exercise such additional duties as the board of fire commissioners may determine not inconsistent with law.

§ 189-h. Annual statement of expenditures and levy of taxes. 1. (a) The fiscal year of each joint fire district shall begin on the first day of January and end on the thirty-first day of December. For each fiscal year, the board of commissioners of each joint fire district shall prepare and adopt an annual budget in accordance with subdivisions two and three of section one hundred eighty-one of this chapter.

(b) Within three days after the adoption of the annual budget of a joint fire district, the fire district secretary shall prepare and deliver to the town clerk of each town in which the fire district is located two certified copies of the annual budget, and file a certified copy of the annual budget with the clerk of each village in which the joint fire district is located. Neither the town board, town supervisor, town clerk or any other officer or employee of any such town, nor the board of trustees, mayor, clerk, treasurer or any other officer or employee of any such village, shall make any change to the annual budget of the fire district.

(c) After the annual budget of the joint fire district has been affixed to the annual budget adopted by the town board and a certified copy presented to the board of supervisors of the county in which the town is situated as required by section one hundred fifteen of this

chapter, the board of supervisors shall assess and levy upon the taxable real property within the joint fire districts the amounts to be raised by tax for the purposes of the respective districts as specified in such annual budgets and shall cause the amount so assessed and levied to be collected, in the same manner and at the same time and by the same officers as town taxes are assessed, levied and collected, provided, that when a joint fire district is located in more than one town, the amount to be raised by tax from the area of each such town in which the joint fire district is located shall be determined in accordance with subdivision (d) of this section. When such taxes are collected, the amount thereof shall be paid to the supervisor of the town and by him immediately paid to the treasurer of the joint fire district.

(d) If a joint fire district includes taxable property located in more than one town, the amount to be assessed, levied and collected upon the property within each of such towns shall be apportioned in accordance with section eight hundred six of the real property tax law.

2. In any case where a parcel of real property separately assessed on the town assessment roll shall be divided by the line of the joint fire district or of any zone established therein as provided in subdivision twenty-seven of section one hundred seventy-six of this chapter, it shall be the duty of the town assessors, after the valuation of the whole of such parcel shall have been fixed, to determine what proportion of such valuation is on account of that part of such parcel lying within the limits of the joint fire district or of such zone or zones, and the assessors shall enter such proportion separately on the assessment roll. The valuation of the real property lying within such joint fire district or within such zone or zones, as so fixed and determined, shall be the valuation subject to taxation for the purposes of such joint fire district or of such zone or zones.

3. The treasurer of each joint fire district shall prepare and file annually in the office of the town clerk of each town in which any part of such joint fire district shall be located, and in the office of the state comptroller, a financial statement setting forth in detail the receipts and expenditures of such joint fire district. Such statement shall be filed in such offices within sixty days after the close of the

fiscal year of the joint fire district.

§ 189-i. Fire protection. The board of fire commissioners shall provide fire protection throughout the entire district and for that purpose may accept the services of any volunteer fire department or company organized and operating within the village, or if the commissioners are unable to provide such fire protection by volunteer services, it may employ and fix the compensation of such firefighters as may be necessary to provide such protection. Moneys, if any, paid to firefighters shall be deemed a part of the cost of maintenance and operation of the district.

ARTICLE 12

DISTRICT AND SPECIAL IMPROVEMENTS

Section 190. Establishment or extension of improvement districts.

190-a. Water storage and distribution districts.

190-b. Sewage disposal districts.

190-c. Preparation of maps and plans.

190-d. Procedure for establishment of a sewage disposal district.

190-e. Wastewater disposal districts.

190-f. Additional powers of sewer districts.

190-g. Water quality treatment districts.

191. Petition.

191-a. Preparation of maps and plans for sewer, wastewater disposal, drainage and water districts before petition.

192. Maps and plans for sewer, wastewater disposal, drainage and water districts.

192-a. Provision for excess sewer, drainage or water facilities.

193. Notice of hearing on petition; cost to typical property; definitions.

194. Establishment or extension of districts.

194-a. Powers of town boards with respect to certain contracts.

195. Recording of determination; review by certiorari.

196. Modification of plans for sewer, wastewater disposal,

- drainage, water or water quality treatment districts.
- 197. Performance of the work.
- 197-a. Contracts by water districts or town water storage and distribution districts with water authorities.
- 198. Powers of town boards with respect to improvement districts.
- 198-a. Special districts for disposal of duck waste in Suffolk county.
- 199. Proceedings for lateral sewers, drains or water mains.
- 200. Petition for street improvement and proceedings thereon.
- 200-a. Construction and repair of sidewalks pursuant to order of town board.
- 201. Sewer and water connections.
- 202. Expenses of improvement; how raised.
- 202-a. Expense of maintenance.
- 202-b. Increase or improvement of facilities.
- 202-c. Dissolution and diminishing area of certain districts.
- 202-d. Increase of maximum amount to be expended.
- 202-e. Acquisition and improvement of additional property in park districts.
- 202-f. Construction or installation of certain improvements in state highways and county roads.
- 203. Existing districts preserved.
- 204. Transition to benefit basis levy of assessments in existing lighting districts.
- 207. Re-establishment of certain water supply districts as water districts.
- 208. Joint administration and operation of special or improvement districts with town functions.
- 208-a. Acquisition of land for proposed district.
- 208-b. Dissolution of lighting or public parking districts; town of Oyster Bay.

§ 190. Establishment or extension of improvement districts. Upon a petition as hereinafter provided, the town board of any town may establish or extend in said town a sewer, drainage, water, water quality

treatment, park, public parking, lighting, snow removal, water supply, sidewalk, a fallout shelter district or refuse and garbage district, aquatic growth control district, ambulance district, watershed protection improvement district, and in any town bordering upon or containing within its boundaries any navigable waters of this state, a harbor improvement district, a public dock district, or beach erosion control district, and provide improvements or services, or both, in any such district, wholly at the expense of the district; but no water supply district shall be established or extended to include lands situate within the boundaries of a water district. No such district shall be established or extended in a city or in an incorporated village provided, however, that such a district may be established or extended wholly or partly within an incorporated village on consent of the village expressed in a local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article nine of the village law, as the case may be, and except, in the case of a water quality treatment district, on consent of a village expressed in a local law or by resolution of the board of trustees and not subject to any referendum.

§ 190-a. Water storage and distribution districts. In the manner hereinafter provided, the town board of any town may establish or extend in such town a water storage and distribution district for the purpose of acquiring or developing a supply of water for sale to water and water supply districts within the water storage and distribution district for redistribution by them. A water storage and distribution district shall consist of water districts and water supply districts which need not be contiguous.

§ 190-b. Sewage disposal districts. In the manner hereinafter provided, the town board of any town may establish or extend in such town a sewage disposal district for the purpose of conveying and disposing, or conveying, treating and disposing of sewage from sewer districts or wastewater disposal districts within such sewage disposal

district. A sewage disposal district shall consist of sewer districts or wastewater disposal districts, or any combination thereof, which need not be contiguous.

§ 190-c. Preparation of maps and plans. 1. Upon a petition 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 at least twenty-five owners of taxable real property situated within each water district or water supply district proposed to be included in a water storage and distribution district or by five per centum of the owners of taxable real property situated within each such district, whichever shall be less, or, in the case of a water district governed by a separate board of commissioners, by a majority of such board, the town board shall, or on its own motion, after a public hearing, may, make a study of the proposal and for such purpose it may assemble data relating to the water resources available to the town and the possibility of developing such resources, may conduct investigations, make inquiries and conduct public meetings upon such notice as it shall deem proper for the purpose of examining into the matter, and, if such preliminary study shall, in its opinion, warrant further action, may cause maps and plans to be prepared. Such maps and plans shall show (1) the identity and boundaries of the water districts which the town board in its judgment considers will be benefited by the establishment or extension of a water storage and distribution district, (2) a written description, as in a deed of conveyance, of the boundaries of the proposed water storage and distribution district or extension, (3) the source of water supply and a description of the lands, streams, water and water rights and facilities, if any, to be acquired therefore, the mode of constructing the proposed water works and the location thereof, including reservoirs, water purification or treatment works, standpipes, wells, pumping stations, aqueducts and mains, (4) estimates of the cost of construction or acquisition of the facilities as shown on the maps and plans, and (5) the method of financing the same including estimates of revenue to be derived annually from the sale of water to water and water supply districts within the water storage and distribution district and revenue

to be derived from the sale of water to a village or from any other source; estimates of the cost of acquisition and construction of water storage and distribution facilities, of maintenance and operation and of debt service.

2. The notice of public hearing to be held as aforesaid shall recite in general terms the purpose thereof, describe the boundaries of the proposed district or extension and specify the time when and place where the town board will meet to consider the proposition and to hear all persons interested in the subject thereof concerning the same. Such notice shall be published and posted as prescribed in section one hundred ninety-three of this chapter.

3. After such maps and plans shall have been prepared, the town board shall, by resolution, designate the place where and time when a public hearing will be held to consider the establishment or extension of a town water storage and distribution district. The town board shall cause a notice of such hearing to be published and posted in the manner prescribed in section one hundred ninety-three. The notice shall comply with the requirements of section one hundred ninety-three as to content, except that no recitation of the filing of a petition shall be made.

4. Establishment or extension of the district. After the public hearing, the town board shall proceed in the manner prescribed by sections one hundred ninety-four, one hundred ninety-five and one hundred ninety-seven of this chapter and all of the provisions of said sections shall apply to the establishment or extension of water storage and distribution districts except that the town board shall not determine whether the petition is signed, and acknowledged or proved, or authenticated, as required by law and is otherwise sufficient and provided further that a resolution approving the establishment or extension of the district shall be subject to permissive referendum in the manner provided in article seven of this chapter, except as hereinafter provided. The time within which a petition requesting that the matter be submitted to the qualified electors of the districts affected shall be sixty days after the adoption of the resolution and the proposition submitted must be approved by the affirmative vote of a

majority of the qualified electors of each district voting thereon. A petition requesting a referendum shall be sufficient if signed, and acknowledged or proved, or authenticated, as to each district, by twenty-five owners of taxable real property situated therein, by owners of taxable real property situated in any of the districts equal to the product obtained by multiplying the number of districts by fifty or by fifty per centum of all of the owners of taxable real property situated in one district. The town clerk shall cause to be prepared and have available for distribution proper forms for the petition and shall distribute a supply to any person requesting the same.

§ 190-d. Procedure for establishment of a sewage disposal district.

All of the provisions of section one hundred ninety-c of this chapter, relating to the preparation of maps and plans and establishment of a water storage and distribution district, shall apply to the preparation of maps and plans and establishment of a sewage disposal district, except that in the case of a sewage disposal district, the map and plan shall show the mode of constructing the proposed sewer facilities and the location thereof, including trunk, interceptor and outfall sewers, pumping stations and sewage treatment and disposal works.

§ 190-e. Wastewater disposal districts. 1. The town board of any town is hereby authorized to establish or extend a wastewater disposal district, or more than one such district, in said town, outside of any incorporated village or city, for the purpose of administration and planning (including educational programs), design, installation, construction, rehabilitation, replacement, operation and maintenance (including pumping and inspections), monitoring, residual treatment and disposal and regulation of private on-site wastewater disposal systems of such district. Such wastewater disposal district shall be created or extended in the manner provided by and pursuant to the provisions of this article. The territory embraced within any such wastewater disposal district may be composed of noncontiguous areas or properties (but shall not include any areas or properties included in sewer districts). When so created, a wastewater disposal district shall be deemed to be an

improvement district created pursuant to the provisions of this article, and shall be subject to the procedural requirements therein set forth.

2. All of the provisions of section one hundred ninety-c of this article, relating to the preparation of maps and plans and establishment of a water storage and distribution district, shall apply to the preparation of maps and plans and establishment of a wastewater disposal district, except that in the case of a wastewater disposal district, the map and plan shall also show the mode and frequency of collection, conveying, treating and disposing of wastewater or residual wastewater, the mode and frequency of inspections and monitoring and the location of properties requiring construction or replacement of private on-site wastewater disposal systems in the next five years.

§ 190-f. Additional powers of sewer districts. Notwithstanding any other provision of law a sewer district may also exercise all the powers of a wastewater disposal district if the map and plan prepared pursuant to section one hundred ninety-c of this article includes on-site wastewater disposal systems.

§ 190-g. Water quality treatment districts. 1. The town board of any town is hereby authorized to establish or extend a water quality treatment district, or more than one such district, for the purposes of (a) procuring by purchase, lease or other means, and installing water quality treatment units or devices, if required; providing periodic testing and monitoring of raw and finished water from private wells in the district; monitoring, modifying, repairing, replacing, operation and maintenance, regenerating water quality treatment units and devices and the administering of the treatment and disposal of residuals generated in the operation of the district pursuant to rules and regulations adopted by the public health and health planning council under section two hundred twenty-five of the public health law; (b) assisting local, state and federal agencies and officials in efforts to establish causes of, and implement remedial measures to reduce, water contamination and protect future water resources within the district; (c) conduct public

meetings and issue an annual public report to members of the district on the operation, financial position and water quality condition of said district.

2. A water quality treatment district established hereunder may consist of noncontiguous or contiguous benefited parcels of property and shall be created by a resolution of the town board, upon petition after a public hearing. The petition may be executed and acknowledged by one or more of the owners of taxable real property of record situated within the town whose private well water is contaminated and at the time the petition is executed and acknowledged, notice and copy of such petition shall be submitted to the state department of health. Upon a petition signed and acknowledged the town board may, or on its own motion, after a public hearing, assemble data relating to the number and location of private wells within the town, the contaminants present in the water supply in such town's private wells, (for the purposes of this section, "contaminants" shall mean those substances found in amounts or concentrations which violate federal, state or local laws, guidelines or rules and regulations relating to drinking water or which may pose a risk to public health), the extent of contamination of the water supply in the town's private wells, and the availability of appropriate treatment technologies for the contaminants found to be present, or which are reasonably expected to be found, currently or in the future, in the water supply in the town's private wells. Upon presentation of the petition or on its own motion, the town board may direct or cause maps and plans to be prepared, provided however, that if the owner or owners of taxable real property undertake to furnish or pay the cost of such maps and plans at his or their cost and expense, the town board shall accept or prepare the same or the town board may adopt a resolution, subject to a permissive referendum, appropriating a specific amount to pay the cost of preparing a general map and plan for providing water quality treatment units or devices and related services. The town board may determine that such maps and plans 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 that 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 maps and plans shall be a town charge, and shall be assessed, levied and collected in the same manner as other town charges. If the town board shall thereafter establish or extend a water quality treatment district, the expense incurred by the town for the preparation of the maps and plans therefor shall be deemed to be part of the cost of such improvement, and the town shall be reimbursed the amount paid therefor, or such portion of that amount which the town board, at the public hearing held pursuant to section one hundred ninety-four of this chapter, shall allocate against such district. Nothing in this section contained, or in any other section of this act, shall be construed to prevent the financing, in whole or in part, of expenditures by private sources, grants or by other means. All such maps and plans shall be filed with the town clerk. Such maps and plans shall show (1) the location of all benefited parcels of properties with water quality treatment units or devices installed prior to the formation of the district and/or those properties requiring installation of water quality treatment units or devices and the mode and frequency of testing, monitoring, modifying if required, operation and maintenance, regenerating of such water quality treatment units or devices and the administering of the treatment and disposal of residuals and any other requirements pursuant to rules and regulations adopted by the public health and health planning council under section two hundred twenty-five of the public health law, and (2) estimates of the costs of procurement, installation, monitoring, testing, modifying, if required, operation and maintenance, regenerating of such water quality treatment units or devices and the treatment and disposal of residuals, and the method of financing the same. Any water quality treatment unit or device which has been installed prior to the formation of the district must be approved pursuant to rules and regulations adopted by the public health and health planning council under section two hundred twenty-five of the public health law, prior to acceptance of such unit or device and its benefited property within the district.

3. Maps and plans shall be submitted to and approved or denied, in writing, by the state department of health. Copy of such notice of approval or denial shall be filed in the office of the clerk of the town in which the proposed district or extension is located. No public

hearing shall be called to establish or extend a water quality treatment district until such maps and plans have been approved by the state department of health.

4. After such maps and plans shall have been approved by the state department of health, the town board shall, by resolution designate the place where and time when a public hearing will be held to consider the establishment or extension of a water quality treatment district. The town board shall cause a notice of such hearing to be published and posted in the manner prescribed in section one hundred ninety-three. The notice shall comply with the requirements of section one hundred ninety-three as to content, except that no recitation of the filing of a petition shall be made. The notice of public hearing shall recite in general terms the purpose thereof and describe the location or locations of the proposed district or extension.

§ 191. Petition. Except as otherwise provided in the case of a water storage and distribution district, water quality treatment district or sewage disposal district, a petition for the establishment or the extension of an improvement district shall be signed by the owners of taxable real property situate in the proposed district or extension thereof, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of the proposed district or extension thereof, as shown upon the latest completed assessment-roll of said town; provided, however, that if there be any resident owners, the petition shall include the signatures of resident owners owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the proposed district or extension owned by resident owners, according to the latest completed assessment-roll. If a portion only of a parcel of such real estate appearing upon the assessment-roll is situate within the proposed district or extension thereof, then the town board may determine the relative value of the part thereof within the proposed district or extension thereof, based upon the valuation of the entire parcel as the same appears upon the assessment-roll. Such petition shall describe the boundaries of the proposed district or extension in a manner sufficient

to identify the lands included therein as in a deed of conveyance, and 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. If such petition shall request the construction or acquisition of an improvement, it shall state the maximum amount proposed to be expended therefor. If the petition shall not request the construction or acquisition of an improvement but shall propose the performance or supplying of certain services, it may state the maximum amount to be expended annually for such services. In addition, a petition for the establishment or extension of a park or public parking district shall describe the property proposed to be acquired for the purposes thereof.

§ 191-a. Preparation of maps and plans for sewer, wastewater disposal, drainage and water districts before petition. The town board of any town may adopt a resolution, subject to a permissive referendum, appropriating a specific amount to pay the cost of preparing a general map and plan for providing sewer, wastewater disposal, drainage or water facilities and services in any portion of the town not included within the boundaries of any incorporated village, city or existing improvement district in which such facilities or services are provided, except that all or part of an incorporated village may be included therein on consent of the village expressed in a local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article five-a of the village law, as the case may be. All such maps and plans shall conform with the requirements of section one hundred ninety-two of this article, and shall be filed with the town clerk. The town board may determine that such maps and plans 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 that 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 maps and plans shall be a town charge, and shall be assessed, levied and

collected in the same manner as other town charges. If the town board shall thereafter establish or extend a sewer, wastewater disposal, drainage or water district and construct a sewer, wastewater disposal, drainage or water system therein, pursuant to the provisions of section one hundred ninety-one of this article, the expense incurred by the town for the preparation of the maps and plans therefor shall be deemed to be part of the cost of such improvement, and the town shall be reimbursed the amount paid therefor, or such portion of that amount which the town board, at the public hearing held pursuant to section one hundred ninety-four of this chapter, shall allocate against such district.

§ 192. Maps and plans for sewer, wastewater disposal, drainage and water districts. Every petition for the establishment or extension of a sewer, wastewater disposal, drainage or water district shall be accompanied by a map and plan prepared by a competent engineer, duly licensed by the state of New York, showing the boundaries of the proposed district and a general plan of the proposed sewer, wastewater disposal, drainage or water system, as the case may be. If a sewer or drainage district is proposed, such map shall show all outlets and the terminus and course of each proposed main sewer or drain together with the location and a general description of all sewage disposal plants, pumping stations and other public works, if any, and shall be consistent with, so far as possible, any comprehensive plan for sewers developed and maintained pursuant to section ninety-nine-f of the general municipal law. If a water district is proposed, said map and plan shall show the source of water supply and a description of the lands, streams, water or water rights to be acquired therefor, the mode of constructing the proposed water works and the location thereof, including reservoirs, water purification or treatment works, water mains, distributing pipes and hydrants, and shall be consistent with, so far as possible, any comprehensive plan for public water supply systems developed and maintained pursuant to section ninety-nine-f of the general municipal law. If, however, the petition shall specify that the supply of water to be used in said water district shall be purchased from a municipal or other corporation, or any person, then said map and plan shall set forth and show only the water mains, distributing pipes, hydrants, reservoirs,

if any, and location of each. Before any sewer system is constructed in any such district, the town board shall cause a copy of the map and plan of the proposed sewer system and sewage disposal plant or proposed extension thereto to be submitted to the state department of health, and, if approved, it shall be filed in the office of the state department of health and the town clerk. The state department of health may require profiles to be submitted for any sewers or drains shown on such map and plan. Such map and plan may be amended with the approval of the state department of health, and if approved, it shall be filed in the office of the state department of health and the town clerk.

§ 192-a. Provision for excess sewer, drainage or water facilities. 1. The town board, in causing maps and plans to be prepared or in approving the establishment or extension of a sewer, drainage or water district may provide by resolution that the map and plan include sewer, drainage or water facilities in excess of those required for the proposed district or extension. Such resolution providing for or requiring excess facilities shall include the estimated expense for such excess facilities and shall be subject to permissive referendum. The necessity for and the extent of the excess capacity shall be determined by the town board and it shall be reserved for utilization by future districts or extensions in the town.

2. The expense of any excess sewer, drainage or water facilities authorized pursuant to this section shall be a town charge and shall be assessed, levied and collected in the same manner and at the same time as other town charges; provided, however, that nothing herein contained shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any excess sewer, drainage or water facilities authorized pursuant to this section. Any such excess sewer, drainage or water facilities shall be deemed to be a district or special improvement authorized by article twelve or twelve-a of this chapter within the meaning of paragraph b of section 35.00 of the local finance law.

3. In the event the petition shall contain a statement that the

improvement in the proposed district or extension shall be constructed at the expense of a petitioning owner of taxable real property in the proposed district or extension, the expense of all excess sewer, drainage or water facilities shall be borne originally as a town charge as provided in this section. If the improvement is to be constructed by or on the behalf of the petitioning owner, such owner shall be compensated by the town for the cost of the excess sewer, drainage or water facilities. In this event the provisions of section one hundred ninety-seven of this chapter relating to competitive bidding shall not apply. If the improvement is to be constructed by the town or by the accepted competitive bidder, the town and not the petitioning owner shall be liable for the cost of the excess facilities.

4. The cost of the excess sewer, drainage or water facilities shall be determined by the town board. In addition to the information required by section one hundred ninety-two of this chapter, the maps and plans shall include an estimate of the cost of the excess facilities. If the improvement is to be constructed by or on behalf of the petitioning owner, an agreement shall be entered into between the town board and such owner which shall state the total cost of the improvement and of the excess facilities or the method by which such costs shall be determined and the date of payment for such excess facilities. If the improvement is to be constructed by the town or by the accepted competitive bidder, the town board, in determining the cost of the excess facilities, shall consider the estimate of the cost of the excess facilities set forth in the maps and plans, the percentage increase in the capacity of the facilities, the maximum amount stated in the petition as the cost of the required facilities and the reduction, if any, in the per unit cost. In no event shall the expense of the excess sewer, drainage or water facilities as determined or agreed to by the town board be less than the difference between the total cost of the improvement as set forth in or determined pursuant to the agreement or the accepted bid and the maximum amount stated in the petition.

5. The town board may authorize the use of any excess facilities acquired pursuant to this section by any district, districts or extensions thereof, thereafter established in such town, in the manner

provided in section two hundred eight of this chapter, provided the expense of such acquisition or the proportionate share of the expense as shall be allocated to a district or extension thereof by the town board, together with the expense of the construction of the original improvement for such district or extension, shall not exceed the maximum amount authorized to be expended in such district or extension. Whenever the town board shall authorize the use of any excess facilities acquired pursuant to this section by any district, districts or extension thereof, the same shall be deemed to be a part of the improvement authorized by such district or extension thereof and the entire cost of such acquisition and the maintenance thereof as apportioned to such district or extension, shall be deemed to be a part of such improvement and shall be assessed, levied and collected in the same manner as other charges against such district or extension.

§ 193. Notice of hearing on petition; cost to typical property; definitions. 1. a. Whenever a petition shall be presented to the town board pursuant to this article, for the establishment or extension of a sewer, wastewater disposal, drainage, water, water quality treatment, park, public parking, lighting, snow removal, water supply, sidewalk, refuse and garbage, aquatic growth control district, ambulance district, harbor improvement district, public dock district, beach erosion control district, watershed protection improvement district, or a fallout shelter district, the board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition, the boundaries of the proposed district, the improvements proposed, the maximum amount proposed to be expended for the improvement as stated in the petition or the maximum amount to be expended for the performance or supplying of services if a maximum amount is stated in the petition, the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, and specifying the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof, concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first

publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the signboard of the town maintained pursuant to subdivision six of section thirty of this chapter, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. In the event that the town maintains a website, such information may also be provided on the website. Prior to the publication of a copy of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home was computed.

b. (1) If the permission of the state comptroller is not required pursuant to section one hundred ninety-four of this article because it is proposed or required that the town in which the district or extension is located shall finance the cost thereof by the issuance of bonds, notes, certificates or other evidences of indebtedness of the town therefor or debt service as proposed to be assumed pursuant to subdivision twelve of section one hundred ninety-eight of this article but the cost to the typical property or, if different, the cost to the typical one or two family home is not above the average cost threshold described in that section, a certified copy of the order of the town board adopted pursuant to this section shall also be filed with the state comptroller on or about the date of the publication of a copy of such order.

(2) Notwithstanding the provisions of subparagraph one of this paragraph, the state comptroller shall not be precluded from requiring the submission of additional information or data in such form and detail as the state comptroller shall deem sufficient or from causing an investigation to be made with respect to the establishment or extension of a district or an increase in the maximum amount to be expended.

2. For purposes of this article the following definition shall apply:

a. the term "typical property" shall mean a benefited property having

an assessed value that approximates the assessed value of the mode of the benefited properties situated in the district or extension that will be required to finance the cost of the proposed improvements;

b. the term "typical one or two family home" shall mean a benefited property improved by a one or two family dwelling and having an assessed value that approximates the assessed value of the mode of the benefited properties improved by one or two family dwellings situated in the district or extension that will be required to finance the cost of the proposed improvements:

c. the terms "cost of the district or extension to the typical property" and "cost of the district or extension to the typical one or two family home" shall mean the amount that it is estimated that the owner of such a typical property or home within the district or extension will be required to pay for debt service, operation and maintenance and other charges, such as user charges, related to the improvements in the first year following formation of the district or extension or, if greater, in the first year in which both principal and interest on any indebtedness and operation and maintenance costs will be paid.

d. the term "mode" shall mean, in connection with assessed value of property, the most frequently occurring assessed value as shown on the latest completed final assessment roll.

§ 194. Establishment or extension of districts. 1. After a hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the town board shall determine by resolution: (a) whether the petition is signed, and acknowledged or proved, or authenticated, as required by law and is otherwise sufficient;

(b) whether all the property and property owners within the proposed district or extension are benefited thereby;

(c) whether all the property and property owners benefited are included within the limits of the proposed district or extension;

(d) whether it is in the public interest to grant in whole or in part

the relief sought.

2. (a) If the town board shall determine that the petition is not signed, and acknowledged or proved, or authenticated, as required by law or that it is otherwise insufficient, or if it is determined that it be not in the public interest to grant in whole or in part the relief sought, the town board shall deny the petition.

(b) If the town board shall determine that the petition is signed, and acknowledged or proved, or authenticated, as required by law and is otherwise sufficient and that it is in the public interest to grant the relief sought, either in whole or in part, but shall find that any part or portion of the property or property owners within the proposed district or extension are not benefited thereby or that certain property or property owners benefited thereby have not been included therein, the town board shall specify the necessary changes of the boundaries of the proposed district or extension to be made in order that all of the property and property owners and only such property and property owners as are benefited shall be included within such proposed district or extension, and the board shall call a further hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. Notice of such further hearing shall be posted and published in the manner provided in section one hundred ninety-three hereof except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed district or extension. Such further hearing shall be conducted in the same manner as an original hearing upon a petition. If and when the town board shall determine in the affirmative all of the questions set forth in subdivision one of this section, the board may adopt a resolution approving the establishment or extension of the district as the boundaries shall be finally determined and the construction of the improvement or providing of the service therein, but no such resolution so approving shall be adopted unless the petition shall comply with the requirements of section one hundred ninety-one as to sufficiency of signers as the boundaries of the proposed district or extension shall be finally determined.

3. (a) Within ten days after the adoption of a resolution by a town

board approving the establishment or extension of a district and the construction of an improvement or the providing of a service therein, the town clerk of the town shall file a certified copy of such resolution, in duplicate, in the office of the state department of audit and control at Albany, New York, together with an application, in duplicate, for permission to create or extend such district as the case may be. Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following:

(1) A certified copy of the petition (omitting, however, the signatures, and acknowledgments or proofs, or authentications) and in the instance of a sewer, drainage or water district, of the map and plan accompanying the same;

(2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced by bonds, bond anticipation notes, capital notes and budget notes; the amount of joint indebtedness contracted or incurred for a joint service or a joint water, sewage or drainage project and the amount of such indebtedness allocated and apportioned to the town, as defined in title one-a of the local finance law; the amount of the indebtedness proposed to be contracted for the improvement; the amount of budgetary appropriations for the payment of any such indebtedness, whether or not such appropriations have been realized as cash, and the amounts, purposes and probable dates of issuance of any bonds, bond anticipation notes, capital notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application;

(3) A statement of the aggregate assessed valuation of the real property situated in the proposed district or extension thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application;

(4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the provisions of the first paragraph of subdivision seven-a of section 2.00 of the local finance law;

(5) A statement as to the manner in which it is proposed to finance the cost of the improvement.

(b) Whenever such an application shall be filed in the office of the

department of audit and control, the state comptroller shall within five days thereafter give notice thereof to the board of supervisors of the county in which such proposed district or extension is located by filing with the clerk of such board of supervisors one copy of such application. At any time within fifteen days of the filing of the application, the board of supervisors may file an objection, in writing, in the office of the department of audit and control. In addition, the state comptroller shall determine whether the public interest will be served by the creation or extension of the district and also whether the cost thereof will be an undue burden upon the property of the proposed district or extension. 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.

4. Upon the expiration of fifteen days from the date of the filing of such application with the clerk of the board of supervisors and upon reaching a determination, the comptroller shall make an order, in duplicate, granting or denying permission for the creation or extension of the district 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 district or extension is located. The town clerk shall present such order to the town board of the town at the next meeting thereof.

5. If the state comptroller shall deny permission for the creation or extension of the district, the town board shall forthwith adopt an order denying the petition. If the state comptroller shall grant permission therefor, the town board may adopt an order establishing the district or extension as the boundaries shall be finally determined.

6. Except as otherwise provided by section two hundred two-b of this article, the permission of the state comptroller shall not be required for the establishment or extension of a district and the construction of an improvement or the providing of a service therein, including an

increase in the maximum amount proposed to be expended for the improvement in a district, unless it is proposed or required that the town in which such district or extension is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefor or it is proposed that debt service on obligations issued to finance the costs of facilities acquired be assumed, pursuant to subdivision twelve of section one hundred ninety-eight of this article, and, if the state comptroller shall have computed average estimated costs for similar types of districts, the cost of the district or extension to the typical property or, if different, the costs of the district or extension to the typical one or two family home, as stated in the notice of hearing, is above the average estimated cost to typical properties or homes for the establishment or extension of similar types of districts as may be annually computed by the state comptroller. The state comptroller annually shall provide to towns notice of the average cost thresholds as may be computed in accordance with this section.

§ 194-a. Powers of town boards with respect to certain contracts. Upon the adoption of a resolution, the town board of any town may enter into such contracts, as it may deem necessary, with any person, corporation or association for the purpose of ensuring that the cost of any improvement district will not constitute an undue burden upon the property within such district and may require the filing of a surety bond or bonds or the deposit of cash or securities with the town board to ensure the performance of such contracts.

§ 195. Recording of determination; review by certiorari. 1. The town clerk shall cause a certified copy of the determination or order of the town board adopted pursuant to the provisions of this article, or adopted pursuant to the provisions of article seventeen-A of the general municipal law, establishing, extending, dissolving or diminishing any district, consolidating districts or increasing the maximum amount proposed to be expended for the improvement in any district or extension thereof, or determining to construct any improvement authorized by this

article, 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 order or determination by the town board, and when so recorded such determination or order shall be presumptive evidence of the regularity of the proceedings for the establishment, extension, dissolution or diminution of such district, of the proceedings instituted for the construction of such improvement and of all other action taken by said town board in relation thereto.

Within ten days after the adoption of a determination or order by the town board establishing, extending, dissolving or diminishing a district, or consolidating districts, the town clerk shall cause a certified copy thereof to be filed in the office of the state department of audit and control at Albany, New York.

2. Any interested person aggrieved by any final determination or order made pursuant to the provisions of this article may review the same by certiorari provided that the application for such order of certiorari is made within thirty days from the date of the recording of the certified copy of the order or determination in the office of the clerk of the county. The said determination or order shall be final and conclusive unless application has been made for review by certiorari within thirty days from the time of recording thereof. No review shall be had unless at the time of the application for a certiorari order 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 sureties, that, in the event of failure to modify said final determination or order he or they will pay to the town board, all such costs and expenses as are incurred by it on account of the said certiorari proceedings, as shall be determined by the court. In the event that upon such review there shall be any modification by the court of said final determination or order 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 places and manner as was the determination or order appealed from.

§ 196. Modification of plans for sewer, wastewater disposal, drainage, water or water quality treatment districts. 1. When the town board shall have established a sewer, wastewater disposal, drainage, water or water quality treatment district and adopted a plan of sewerage, wastewater disposal, drainage, water or water quality treatment system for such district, such plan shall not be modified by the board, nor by any officer of the town, except after public notice given by publication in the official paper of intention to modify the same, which notice shall specify the particulars in which it is proposed to modify it, and a time and place when the board will consider any objections which may be made thereto, which time shall not be less than ten nor more than twenty days after the first publication of said notice. When any change shall be made in the plan proposed and once adopted, a revised or additional map and profile shall be made showing the change, and all such maps and profiles shall be carefully preserved in the office of the town clerk and open to inspection by all persons interested.

2. In the case of water quality treatment districts, amendments or modifications of plans must have the written approval of the department of health prior to adoption. At the request of an owner of a parcel of property within the town, if the private well water on such property is contaminated, a water quality treatment district plan may be amended, from time to time, to include said parcel of property. If an owner of a parcel of property within the town requests exclusion from the district, such request shall be granted without the state department of health approval. The removal of a parcel of property from a district shall in no way affect the owner's liability for charges which have accrued against the owner's property, prior to said exclusion, for the procurement, installation, modification, replacement and removal of a water quality treatment unit or device or for expenses of operation and maintenance including monitoring, testing, regenerating and treating. Should a public or private water system, supplier or authority commence supplying water to any parcel of property within a water quality treatment district, such parcel of property shall no longer be considered part of the water quality treatment district, and all services to such parcels shall be terminated. Termination of services shall include, the removal of all water quality treatment units or

devices and a charge for the cost of doing so to the benefited property, except when such unit or device was acquired and owned by the property owner or when the district determines that such unit or device is obsolete and no longer useful for any district purpose.

§ 197. Performance of the work. If the town board shall upon the petition determine to grant the relief sought by the petitioners and establish or extend a district either in whole or in part, or if the town board shall determine to establish or extend a district on its own motion without a petition but after a public hearing and subject to a permissive referendum as provided in article twelve-A of this chapter, the town board shall, after such determination becomes effective, require the town engineer, or an engineer employed for that purpose, to prepare definite plans and specifications for the improvement, a careful estimate of the expense, and, with the assistance of the town attorney, or an attorney employed for that purpose, a proposed contract or contracts for the execution of the work, and to file the same with the town clerk within a time to be prescribed by the said town board. Thereupon the said board shall examine such definite plans, specifications, estimates and the proposed contract or contracts, and may make such modifications and changes in the plans, specifications, estimates and contract or contracts as to the board shall seem expedient, and thereupon the board may adopt or reject the same. If the estimated expense of the improvement does not exceed the amount specified for public work in subdivision one of section one hundred three of the general municipal law, the board may adopt such plans and specifications and cause said improvement to be made or may enter into a contract or contracts therefor without giving public notice thereof. If the estimated expense exceeds such amount, upon adopting the plans and specifications, the board shall invite sealed proposals for furnishing the material and labor necessary by the publication of a notice at least once in the official paper and in such other newspaper as to the board may seem expedient, requiring all persons who shall offer to do said work to file a sealed proposal or offer to do the work, and with it a certified check for a sum equal to five per centum of the estimated expense of the improvement, payable to the order of the supervisor, or a

bond with sufficient sureties, to be approved by the supervisor, in a penal sum equal to five per centum of the estimated expense of the improvement, conditioned that if his proposal is accepted he will enter into a contract for the same, and that he will execute such further security as may be required for the faithful performance of the contract. If a person or corporation making such proposal shall fail to enter into a contract pursuant to the requirements of the board, or shall fail to give the further security which may be prescribed in said notice, within the time to be limited therein, then the check deposited as aforesaid and the moneys standing to the credit of the same shall be forfeited to the town as liquidated damages and not as a penalty, and the supervisor shall collect the same or enforce the payment of the bond for the benefit of the town. The notices inviting sealed proposals shall specify a time when and place where they will be received and considered and they shall be received and considered publicly at such time and place. There shall be at least ten and not more than thirty days between the first publication of the notice and the time when the proposals will be received, and during that time the plans and specifications for the work shall be exhibited publicly in the office of the town clerk. It shall be the duty of the town clerk to provide that all persons desiring to examine the same shall have reasonable opportunity to do so, and that there shall be no discrimination in favor of any person or persons in the opportunity to make proper examination of said plans and specifications. The town board may award one contract for the entire work or separate contracts for portions thereof. The board shall determine the lowest responsible bidder or bidders whose bid and check or bond shall have been made and filed in conformity with this section and with the notice published by the board as aforesaid, and the contract or contracts shall be awarded to the lowest responsible formal bidder therefor, unless in the judgment of the board it shall be in the interests of the town to reject all bids and to advertise anew. In that event, the board shall proceed accordingly. In no event shall any contract be awarded if the total expense of the improvement shall exceed the maximum amount stated in the petition or in the final order, if the town board proceeded under article twelve-A of this chapter. Nothing in this section shall be construed to prevent the town from performing any such work or part thereof by or through its regular employees and the

cost thereof shall be considered as part of the expense of the improvement.

§ 197-a. Contracts by water districts or town water storage and distribution districts with water authorities. The town board may enter into an agreement with a public water authority which possesses express reciprocal powers whereby the award of contracts or orders for engineering services, and for work performed, or materials or supplies furnished in connection with the construction, development, extension or improvement of a water supply or distribution system, or any part or parts thereof, for or on behalf of a water district or a town water storage and distribution district may be made by such public water authority, and such an agreement may contain provisions equitably allocating costs. If such agreement shall authorize a public water authority to purchase supplies or equipment or to construct public works, such authority shall be subject to all provisions of law to which a town would be subject in relation to advertising and awarding any such contracts for supplies, equipment or public works. The town board, where a water district exists, may enter into an agreement with a public water authority which possesses express reciprocal powers whereby the award of contracts or orders for engineering services, and for work performed, or materials or supplies furnished in connection with the construction, development, extension or improvement of a water supply or distribution system, or any part or parts thereof, for or on behalf of such public water authority may be made by such town, and such an agreement may contain provisions equitably allocating costs.

§ 198. Powers of town boards with respect to improvement districts. The town board of every town, except as otherwise provided by law, shall have authority to and may exercise the following powers with respect to improvement districts, heretofore or hereafter established, subject to the provisions of this article:

1. Sewer districts. After a sewer district shall have been established, the town board may: (a) lay out, open, design, construct,

alter and maintain sanitary sewers, sewage disposal plants or any necessary work appurtenant thereto, for the benefit of any sewer district in said town, provided, however, that any such improvement shall be consistent with, so far as possible, any comprehensive plan for sewers developed and maintained pursuant to section ninety-nine-f of the general municipal law;

(b) contract with any person or corporation, municipal or otherwise, for supplying the inhabitants of such district with sanitary sewer facilities;

(c) contract for the purchase from any person or corporation, municipal or otherwise, of any trunk sewer, lateral sewer, sewer system or disposal plant, rights of way and appurtenances, for the purpose of supplying the inhabitants of any such district with sanitary sewer facilities, provided that prior to the purchase of a lateral sewer a petition for such purpose stating the maximum amount to be expended therefor shall be filed with the town clerk, signed by the owners of taxable real property fronting or abutting upon either side of any street or highway, or part of a street or highway, in said district wherein said lateral is constructed to the extent of at least one-half of the entire frontage on both sides of said street or highway, or part aforesaid, as shown upon the latest completed assessment roll of said town, and the procedure thereon and for the financing of such purchase and the levy of assessments therefor shall be the same as provided in this chapter for the construction of a lateral sewer in a sewer district;

(d) regulate the construction of all private sewers and prescribe the manner in which sewer connections shall be made, provided, however, that such construction shall be consistent with, so far as possible, any comprehensive plan for sewers developed and maintained pursuant to section ninety-nine-f of the general municipal law;

(e) cause sewer pipes to be laid, relaid or repaired in or below the surface of any public highway, road, street or avenue in a county in which such town is located or in an adjoining county, as a necessary use of the highway and for highway purposes, without obtaining any easement therefor from the owner of the fee of the land in said public highway, road, street or avenue. The town board shall cause such highway, road, street or avenue to be restored to its usual condition at the expense of

the district benefited. No sewer pipes shall be laid under any highway, road, street or avenue in another town or any city or incorporated village without the consent of the governing board of such town, city or village, and if such highway be a state or county highway or a highway constructed pursuant to section one hundred ninety-four or one hundred ninety-five or article six of the highway law, in addition to such consents, the consent of the commissioner of transportation;

(f) enter into a contract or contracts with another sewer district or with any incorporated city or village or with one or more corporations or individuals for the joint disposal of sewage, and the expense of such joint disposal of sewage shall be apportioned between the contracting parties in proportion to the areas served, volumes of sewage disposed of or the benefits received by each contracting party;

(g) adopt, from time to time, ordinances, rules and regulations for the operation of the sewer district and the use of the sewer system therein, and enforce compliance with such ordinances, rules and regulations as provided in section one hundred thirty-five of this chapter;

(h) establish, from time to time, charges, fees or rates to be paid by the owners of real property within such district for the connection of house service lines or mains with such sewer system. Such connection charge may include any expense incurred for the purpose of providing service, whether such expense be incurred for construction within the property line or within the street lines. In addition, such connection charge may include a fee for the inspection of such connection, the expense of performing service in relation thereto or for any other special benefit received;

(i) establish, from time to time, charges, fees or rates for the use of such sewer system, to be designated "sewer rents". Such rents may be based upon the metered consumption of water on premises connected with the sewer system, making proper allowance for commercial use of water, the number and kind of plumbing fixtures connected with the sewer system, the number of persons served by the sewer system, or upon any other equitable basis, as the town board may determine. The provisions of this paragraph shall apply only to those sewer districts in which sewer rents have been established and are being imposed on May first, nineteen hundred fifty-one, pursuant to the provisions of this

paragraph. The provisions of this paragraph shall not prevent a town from acting pursuant to the provisions of paragraph (l) of this subdivision;

(j) establish, from time to time, charges, fees or rates for services rendered or work performed for the particular or special benefit of any individual parcel or portion of real property within such sewer district;

(k) provide by ordinance, rule or regulation for the time within which rates, charges, fees or sewer rents may be paid, and may provide a penalty not exceeding ten per centum of the amount due when such rates, charges, fees or sewer rents are in arrears for thirty days or longer, and may provide for the payment of such charges, fees, rates or sewer rents in advance. The town clerk shall annually file with the town board statements showing the unpaid rates, charges, fees or sewer rents in such districts. Such statements shall contain a brief description of the property against which such sewer rents were imposed, the names of the persons or corporations liable to pay for the same and the amount chargeable to each. The supervisor shall transmit such statement to the board of supervisors which shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax rolls of such town under the name of "sewer charges". Such tax shall be paid to the supervisor of such town. All of the provisions of the existing tax laws of the state of New York covering the enforcement and collection of unpaid town taxes or assessments for special improvements in the several towns of the state of New York not inconsistent herewith shall apply to the collection of such unpaid sewer charges. All fees, charges, rates and sewer rents may be used for the payment of the cost of the management, maintenance, operation and repair of the sewerage system including treatment and disposal works, or for the enlargement or replacement of the same. The term "sewer rents", as used in this paragraph, has reference only to sewer rents established pursuant to paragraph (i) of this subdivision;

(l) notwithstanding any other provisions of law, establish and impose sewer rents pursuant to the provision of article fourteen-f of the general municipal law as a source of revenue, other than assessments upon benefited real property, for financing district expenditures. Such sewer rents may be expended as provided in article fourteen-f of the

general municipal law and, to the extent that such sewer rents provide a source of revenue for such expenditures, assessments shall not be levied upon property especially benefited by the sewer system or the part or parts thereof for which such rents are established and imposed. This paragraph does not affect any provisions of law relating to the authorization or construction of any improvement in a sewer district.

1-a. Sewage disposal districts. The town board shall have and exercise all of the powers with respect to a sewage disposal district which are provided in subdivision one in the case of sewer districts, in so far as the same are consonant with the purposes of the sewage disposal district, as described in section one hundred ninety-b, provided, however, that the charges for trunk sewer, sewage treatment and sewage disposal service shall be sufficient to pay all estimated annual costs of operation and maintenance and all annual installments of principal of, and interest on, obligations issued on behalf of the sewage disposal district. In the event that such revenues in any year are insufficient, the excess of cost over revenues may be assessed against the real property of the district as hereinafter provided.

1-b. Wastewater disposal districts. (a) The town board shall have and exercise all of the powers with respect to a wastewater disposal district which are provided in subdivision one in the case of sewer districts, in so far as the same are consonant with the purposes of the wastewater disposal district, as described in section one hundred ninety-e of this article, provided, however, that the charges for all wastewater disposal district services shall be sufficient to pay all estimated annual costs of operation and maintenance and all annual installments of principal of, and interest on, obligations issued on behalf of the wastewater disposal district. In the event that such revenues in any year are insufficient, the excess of costs over revenues may be assessed against the real property of the district as hereinafter provided.

(b) The town board shall also have power to institute an industrial or commercial cost recovery system for payment to the United States by the commercial users of the private on-site wastewater disposal system of that portion of the cost of construction of such system which is

applicable to the treatment of commercial wastes to the extent attributable to the federal share of the cost of construction.

(c) The town board shall also have the power to submit, on behalf of individual property owners who have requested such assistance in writing, an application for federal assistance and state assistance towards the eligible cost of construction of private on-site wastewater disposal systems.

(d) Upon approval of an application for federal assistance towards the eligible cost of construction of private on-site wastewater disposal systems the town board may enter into a contract with the federal government for payment of such assistance.

2. Drainage districts. After a drainage district shall have been established, the town board may lay out, open, design, construct, maintain and alter drains, storm water sewers, pumping stations or necessary works appurtenant thereto, and improve any water course for the benefit of any drainage district in such town; contract with any person or corporation, municipal or otherwise, for supplying the inhabitants of such drainage district with storm sewerage facilities; contract for the purchase from any person or corporation, municipal or otherwise, of any trunk sewer, sewer system, pumping station, rights of way and appurtenances, for any such purpose or purposes; and may regulate the construction of all private drains and storm sewers and prescribe the manner in which storm sewer connections shall be made. The town board may lay and construct storm water sewers and necessary incidental appurtenances thereto in and below the surface of any public highway, road, street or avenue of such town within a drainage district as a necessary use of the highway and for highway purposes under the supervision of the town superintendent of highways without obtaining any easement therefor from the owner of the fee of the land in such public highway, road, street or avenue in the drainage district.

3. Water districts. (a) Construction of system. After a water district shall have been established, the town board may construct, maintain, extend, repair and regulate water works, wells, reservoirs, or basins for the purpose of supplying the inhabitants of any water district in such town, with pure and wholesome water for domestic and commercial

uses, and for protection against fire; provided, however, that any such improvement shall be consistent with, so far as possible, any comprehensive plan for public water supply systems developed and maintained pursuant to section ninety-nine-f of the general municipal law. The town board may cause water pipes and necessary appurtenances thereto to be laid, relaid or repaired in or under the surface of any highway in a county in which such town is located or in an adjoining county, for the purpose of transporting water to a water district in said town, and shall cause such highway to be restored to its usual condition at the expense of the district benefited, or may cause water pipes and necessary appurtenances thereto to be constructed along an easement acquired for such purpose, pursuant to law. No water pipes shall be laid under any highway, road, street, or avenue in any city or incorporated village without the consent of the governing board of such city or village, and if such highway be a state or county highway, or a highway constructed pursuant to section one hundred ninety-four or one hundred ninety-five or article six of the highway law, in addition to such consents, the consent of the state superintendent of public works. The town board may also acquire by purchase any existing water system, or a portion or portions thereof, in the county in which such town is located, and/or in an adjoining county, for the purpose of supplying the inhabitants of a water district in such town, but the cost of acquisition thereof shall not exceed the maximum amount stated in the petition or in the final order, if the town board proceeded under article twelve-A of this chapter. For the purpose of promoting the health, safety, morals or general welfare of the community, including the protection and preservation of the property of the town and of its inhabitants and for the maintenance of peace and good order and for the benefit of trade, or for any of such purposes, the town board may lay, construct and maintain mains and conduits, subject to the supervision of the town superintendent of highways, in, on, along or under the surface of any highway, road, street or avenue within the water district, as a necessary use thereof for highway purposes and without obtaining any easement therefor from the owner of the fee of the land in such highways, roads, streets or avenues, and the town board may erect and place hydrants, valves, valve boxes, pipes and necessary appurtenances thereto, in, on, along or under the surface of such highways, roads,

streets and avenues, or any of them, or in or along any easements acquired for such purpose as provided in this subdivision. The town board may also exercise similar powers in, on, along or under the surface of any private highways, roads, streets or avenues within the water district, as a necessary use thereof for the purpose of promoting the public welfare, provided that there be dwelling houses erected and used for residential purposes on the lands abutting on such private highway, road, street or avenue. The owners of the land in such private highways, roads, streets or avenues may be compensated for the use thereof in damages which shall be assessed and determined as provided in article eight of the highway law upon the opening of a new highway where easements have not been granted. If the town board shall cause or permit any excavation to be made in any highway, road, street or avenue for the performance of work pursuant to the provisions of this article, the town board shall cause such highway, road, street or avenue to be restored to its usual condition at the expense of the district benefited. Supply pipes connecting with district mains shall be installed and repaired at the property owner's expense under the direction of an employee of the town or the district after a permit therefor has been granted, except that the town board may, by resolution, provide that that portion of a supply pipe within the bounds of a public highway shall be installed, maintained and repaired by the water district. The costs of installation, maintenance and repair shall be district charges to be assessed, levied and collected as provided in sections two hundred two and two hundred two-a of this chapter. The town board may also fix a uniform service charge for the installation of such portion of a supply pipe, regardless of the location of the water main and regardless of the soil, rock or other physical conditions within the highway, and provide for the time and manner of payment of such charge by the property owner served by the supply pipe. If a property owner shall fail to pay the uniform service charge, a statement showing the name of the property owner and the amount unpaid and containing a brief description of the real property shall be transmitted to the board of supervisors of the county and such amount shall be levied and collected as an assessment against the real property, all in the manner provided in paragraph (d) of this subdivision in the case of unpaid water rents. Such service charges, when collected, may be used for any water district purpose,

except as otherwise provided by law. Any member of the town board or the board of district commissioners, if there be one, or a duly authorized agent of either, may at any time enter a building or upon premises where water is used from supply pipes connected to a district system, for the purpose of examining such pipes and the manner of installation thereof.

(b) Purchase and sale of water. The town board may contract with any person or corporation, municipal or otherwise, or with a town or county on behalf of a water district, for a supply of water, for a term not to exceed forty years, and shall have the power and authority to resell said water to the inhabitants and consumers in said water district and may use such portion thereof within the district as it may see fit and proper for public purposes and provide for the payment as a town charge of that portion of the cost of said water used by the town. The town board may also sell water for the benefit of such water district to municipalities, water districts, water supply districts and fire districts, and for fire purposes to fire protection districts, fire alarm districts and for "unprotected areas" pursuant to section one hundred eighty-four-a of this chapter, but the town board shall not supply water of such water district to that portion of any fire district, fire protection district, fire alarm district or any such "unprotected area" which shall be included within the boundaries of another water district. The town board, in its discretion, may permit the use of water from hydrants of a water district for fire purposes without charge in all or any part of the area of a fire district, fire protection district, fire alarm district, or "unprotected area", which is wholly or partly included within the area of such water district. The town board may permit any person or corporation owning real estate outside of the water district to use water from a district system for a rental, subject to the restrictions to be prescribed by said board, provided, however, that no such use shall be permitted outside of the town in which such district is located if such territory is served by another water district, a water supply company, city, village or joint water works system unless the approval of the water power and control commission is first obtained. The town board shall not sell nor permit the use of water under this section outside of the district if such use will reduce the supply of water so that it will not be sufficient for the district affected or its inhabitants.

(c) Ordinances, rules and regulations. The town board shall have the power to adopt, from time to time, ordinances, rules and regulations for the operation of the water district and the use of water therein, and in addition to the remedies provided in section one hundred thirty-five for the enforcement thereof or for the punishment of violators, the town board may enforce compliance with such ordinances, rules and regulations by cutting off the supply of water.

(d) Water rates. The town board shall establish, from time to time, the water rates to be paid by consumers and may provide for the payment of said water charges in advance. The board may provide that a discount shall be allowed for the prompt payment of water rates within the time required by the board for the payment thereof. Such water charges shall be a lien upon the real property upon which or in connection with which the water was used. The town board may provide by ordinance or resolution that unpaid water charges in arrears for thirty days or longer shall be subject to a penalty not exceeding ten per centum of the amount due, and may further provide for cutting off the supply of water if such water charges are not paid within sixty days from the date due. At the same time as the filing of the estimates specified in section one hundred four of this chapter, or in case the town board shall elect by resolution a subsequent date, which in no event shall be later than November first in any year, the town clerk shall annually file with the town board, and with the supervisors of adjoining towns in which permits have been issued to property owners, statements showing the unpaid water charges in the respective districts and towns and which have not appeared on any such statements previously filed. Such statements shall contain a brief description of the property upon which the water was used, the names of the persons or corporations liable to pay for the same and the amount chargeable to each. The supervisor of the town in which the districts are located and the supervisors of adjoining towns in which permits have been issued shall transmit such statements to the board of supervisors of the county at its next regular meeting. The board of supervisors shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax rolls of the various towns under the name of "Water Rents." Such tax shall be paid to the supervisors of the respective towns. The supervisors of adjoining towns shall pay the same out of the first money

collected which is available for town purposes to the supervisor of the town in which the water districts are located. All of the provisions of the existing tax laws of the state of New York covering the enforcement and collection of unpaid town taxes or assessments for special improvements in the several towns of the state of New York not inconsistent herewith shall apply to the collection of such unpaid water rents. Such water rates when collected, shall be applied toward the maintenance, operation, enlargement and improvement of the water system and for the payment of the principal and interest of bonds issued for the purposes of such district.

3-a. (a) Water quality treatment districts. After a water quality treatment district has been established, the town board may take such action as may be necessary or desirable to adopt plans and specifications and enter into a contract or contracts, request, receive and administer grants and other sums of money necessary or proper for the purposes of the district, or take such other action as may be necessary or desirable for water quality treatment, including but not limited to the procurement, by purchase, lease or other means, of a water quality treatment unit or device, installation, monitoring, testing, modifying, operation and maintenance, and the imposition of charges for the expense thereof when such expense is not paid for by a private source, grant or by any other means.

(b) An agreement between the town board and an owner of a benefited parcel of property shall be entered into before the procurement, installation and maintenance of a water quality treatment unit or device. An agreement between such parties shall also be required for the modification and/or maintenance of a water quality treatment unit or device which is in place at the time when the property becomes a part of the district, however, the modification and/or unit or device must first be approved by the state department of health. Such agreements may be amended from time to time by mutual consent of the town board and the owner of a benefited parcel of property. The agreement shall set forth the amount to be paid by the owner attributable to the expense of procurement, installation, and modification, as the case may be, of the water quality treatment unit or device, and shall contain a statement that the ownership of the treatment units or devices purchased by the

district shall remain the property of the district and that charges for monitoring, testing, operation and maintenance shall be determined annually as provided in section two hundred two-a of this chapter. All of the expenses for the procurement and installation or modification may be paid at the time an agreement is entered into. The town board may, by resolution, authorize payment of the expenses of procurement, installation or modification of the water quality treatment unit or device over a period of time in annual installments. Such resolutions shall set forth whether the annual installments shall be due and payable at the same time as town and county taxes are due or at another time. The option of paying such expenses in annual installments, if provided by town board resolution, shall be available to each property owner in the district. If such annual installments shall be due at the same time as town and county taxes, the supervisor shall transmit the amount of the annual installments to the tax levying body for the levy and collection and enforcement of the same in the manner and at the same time as town and county taxes are levied, collected and enforced.

(c) Where the annual installments are to be paid at any other time, the resolution shall set forth the time and manner of payment and collection. Such resolution may be amended from time to time. If any portion or an installment for the procurement, installation and modification of such unit or device is not paid within thirty days of when it is due, the town board shall notify the owner of the property that unless such amount is paid within ten days from the date of the notice, such unit or device may be removed at the expense of the property owner. If the owner fails to pay such amount by such date, the town board may cause such unit or device to be removed. After such removal, the town board shall send the owner a statement of the amount due, together with the amount of expense attributable to removal of such unit or device, and the total amount thereof shall be a lien upon such real property and collection thereof shall be enforced at the same time and in the manner as the collection of town and county taxes are enforced with interest as provided herein. If the unit or device is not so removed, the collection of the amount set forth in the first notice of delinquency shall be enforced at the same time and in the manner as the collection of town and county taxes are enforced. The total amount set forth in such first notice, together with interest thereon shall be

a lien upon such real property until it is paid. Interest shall be charged at the rate of one percent per month or fraction thereof, subsequent to the expiration of the ten days notice, until paid or the date of tax sale, whichever is sooner. On or before the first day of July in each year, the supervisor shall prepare and transmit to the tax enforcement officer or body, a list of those properties and property owners who are in arrears and the amount chargeable to each with interest thereon, as provided herein. All of the provisions of the existing tax laws of the state of New York covering the enforcement and collection of unpaid town taxes or assessments for special improvements in the several towns of the state of New York not inconsistent herewith shall apply to the collection of such unpaid charges. Such amounts, when collected, shall be credited to the applicable water quality treatment district fund and shall be used only for such district purposes.

(d) The agreement shall also contain a grant by the owner to the water quality treatment district, its agents, employees and representatives authorized to act on its behalf, a right of entry and access to the property, while such property is within such district, for the purpose of installation, modification, replacement, repair, monitoring, testing, operation and maintenance, regeneration and removal of the water quality treatment unit or device. Thereafter employees, agents and authorized representatives of the district shall have a right of entry and access to such property for the purposes specified herein, upon reasonable notice at reasonable times. If a lessee or occupant of said property refuses to allow such entry and access, the town board may apply to a court of competent jurisdiction to enforce its right of entry and access. If entry and access was refused by the owner of the property, the town board may in its discretion remove the water quality treatment unit or device at the expense of the owner, unless such unit or device was acquired and owned by the property owner and exclude the property from the district. Such expense together with any other charges accrued prior to such removal shall be collected in the manner provided in paragraph (c) of subdivision three-a of section one hundred ninety-eight of this chapter.

4. Park districts. After a park district shall have been established, the town board shall proceed to acquire by purchase or condemnation of

the property described in the petition or in the final order, if the town board proceeded under article twelve-A of this chapter, for the establishment of such park district, and, thereafter the board may erect or cause to be erected thereon non-commercial buildings and structures and it may purchase necessary equipment and otherwise improve such property for park purposes, as the board may determine. In existing park districts, the town board may acquire by purchase, condemnation or lease, property for public parking places and maintain the same in accordance with the provisions of subdivision five hereof, without the establishment of a public parking district. No property situated within an incorporated village or city shall be acquired in any manner for park purposes, unless the permission and consent of the board of trustees of such village or the common council or legislative body of such city, is first obtained; provided that such permission and consent, if obtained subsequent to the acquisition of any such property, shall be effective for all purposes and to the same extent as though obtained prior to such acquisition. The town board may sell, convey and transfer any property acquired for park purposes at such an amount as it may determine but not less than the original cost thereof, and apply the proceeds of such sale, conveyance or transfer to the purchase of other property for park purposes and improve such property in the manner provided herein. The town board of the town of Oyster Bay may also convey and transfer to the state of New York or to any municipal or district corporation as defined by section three of the general corporation law, any property acquired for park purposes, or any part thereof, when no longer needed, either without consideration or for such consideration and upon such terms and conditions as the town board may determine and the resolution authorizing such conveyance or transfer shall be subject to a permissive referendum. The town board of the town of Hempstead may lease to the board of cooperative educational services, as defined by article forty of the education law, any property acquired for park purposes, or any part thereof, when no longer needed, either without consideration or for such consideration and upon such terms and conditions as the town board may determine. The town board may employ such persons and expend such amount of money as may be necessary for the proper maintenance of such park for the use, convenience and enjoyment of the inhabitants of such park district, and, may in its discretion, grant licenses and privileges

for any use of such park and park property which contributes thereto. The town board may fix a reasonable charge for the use of such park by all persons other than inhabitants and taxpayers of such park district, and, in addition, the board may adopt general rules and regulations for the government and protection of the park and all property therein, and, for the enforcement thereof, provide that the violator of any rule or regulation relating to the park or property therein shall be guilty of a misdemeanor and shall, on conviction, in the county of Nassau before a judge of the district court, and elsewhere before a justice of the peace, be punished by a fine not exceeding fifty dollars, or, in default of payment of such fine, by imprisonment not exceeding thirty days.

5. Public parking districts. After a public parking district shall have been established, the town board shall proceed to acquire by purchase, condemnation or lease the property described in the petition or in the final order, if the town board proceeded under article twelve-A of this chapter for the establishment of such public parking district, and, thereafter the board may purchase necessary equipment and otherwise improve such property for parking vehicles, as the board may determine. The town board may sell, convey, lease and transfer any property acquired for public parking purposes at such an amount as it may determine but not less than the original cost thereof, and apply the proceeds of such sale, conveyance, lease or transfer to the purchase of other property for public parking and improve such property in the manner provided herein. The town board may employ such persons and expend such amounts of money as may be necessary for the proper maintenance of such public parking places. The town board may fix reasonable charges for the use of such public parking places, and for the purpose of collecting such charges may acquire, install and maintain parking meters. The board may adopt general rules and regulations for the government of such public parking places, and, for the enforcement thereof, provide that the violator of any rule or regulation relating to the public parking place shall be guilty of a misdemeanor. Where parking meters are placed upon highways located outside of villages but within the public parking district at the expense of the town, the town board may transfer such parking meters to the parking district upon payment to the town of the present market value of such meters, in which event the

fees from such parking meters shall belong to the parking district and the cost of operation and maintenance thereafter be borne by such public parking district. The rules and regulations for the government of parking meters owned by a public parking district which are located on highways within the district may be adopted only pursuant to the provisions of the vehicle and traffic law.

6. Lighting districts. After a lighting district shall have been established, the town board may contract for a term not exceeding ten years for the illumination of the streets or highways in said district, or such portion thereof as such board may determine. Whenever said district shall have been established and the town board shall have determined to light only a portion of the streets and highways in said district and shall have awarded a contract accordingly, the lighting of additional streets and highways in said district may be contracted for as said town board, in its discretion, may, from time to time, determine advisable. If the town board shall deem it advisable or if the petition shall require the town board so to do, said town board may purchase lighting standards at the expense of said district and may enter into a contract for the installation and maintenance thereof and for supplying electricity or gas therefor.

Whenever a petition requesting the installation of street lighting equipment along a street or highway or portion thereof in any lighting district, signed by the owners of real estate fronting or abutting upon either side of said street, highway or portion thereof to the extent of at least one-half of the entire frontage or bounds on both sides thereof, 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, is filed with the town clerk, the town board shall adopt an order reciting in general terms the filing of such petition and its contents and specifying the time and place, when and where said board will meet to consider said petition and to hear all persons interested in the subject matter thereof. A copy of such order, certified by the town clerk, shall be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the date set therein for the

hearing, and shall also be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter. After such hearing and upon evidence given therein, the town board shall determine by resolution (a) whether the petition is signed, and acknowledged or proved, or authenticated as required by law and is otherwise sufficient, and (b) whether it is in the public interest to grant, in whole or in part, the relief sought. If the town board shall determine that the petition is not signed, or acknowledged or proved, or authenticated as required by law, or that it is otherwise insufficient, or if it be determined that it is not in the public interest to grant in whole or in part the relief sought, the town board shall deny the petition. If the town board shall determine in the affirmative the sufficiency of the petition and that it is in the public interest to grant in whole or in part the relief sought, the town board may adopt a resolution approving the petition and authorizing the installation of street lighting equipment along the streets, highways or portions thereof described in the petition, and in such case the town board is authorized to purchase and to have installed the street lighting standards and wiring. The cost of such improvement upon completion thereof, or at any time prior thereto, may be financed by the issuance of obligations of the town, pursuant to the local finance law. The town board shall annually apportion and assess upon the several lots and parcels of land within the district in proportion to the amount of benefit which the improvement shall confer upon the same, and in the manner provided in section two hundred two-a of the town law for the assessment of the cost of maintenance in a sewer district, an amount sufficient to pay the principal of and interest on said obligations as the same shall become due and payable. The cost of maintenance of such improvement shall be a charge upon the district.

7. Snow removal districts. After a snow removal district shall have been established, the town board may contract for a term not exceeding ten years for the removal of snow from all the sidewalks in said district or such portion thereof as the board may determine. Whenever the town board shall have awarded a contract for the removal of snow from a portion of the sidewalks in any such district, the town board may contract for the removal of snow from additional sidewalks in said

district from time to time as the said town board in its discretion may determine advisable. Whenever the town board may determine it advantageous so to do, it may employ a sufficient number of persons and provide the necessary equipment to remove snow from sidewalks within the district, at the expense of said snow removal district.

8. Water supply districts. After a water supply district shall have been established, the town board may contract for a term not exceeding forty years for the delivery by a water district, municipal corporation, water authority, or by a corporation subject to the provisions of article four of the transportation corporations law, of a supply of water for fire, sanitary or other public purposes, to such district, and for the furnishing, erection, maintenance, care and replacement of fire hydrants in connection therewith.

8-a. Water storage and distribution districts. The town board shall have and exercise all of the powers with respect to a water storage and distribution district which are provided in subdivision three in the case of water districts, in so far as the same are consonant with the purposes of the water storage and distribution district, as described in section one hundred ninety-a, provided, however, that the charges for water sold shall be sufficient to pay all estimated annual costs of operation and maintenance and all annual installments of principal of, and interest on, obligations issued on behalf of the water storage and distribution district. In the event that such revenues in any year are insufficient, the excess of cost over revenues may be assessed against the real property of the district as hereinafter provided.

9. Refuse and garbage districts. After a refuse and garbage district shall have been established in such town, the town board may,

(a) Provide for the collection and/or resource recovery or disposition, or any combination thereof of garbage, ashes, rubbish and other waste matter in such district, and for any of such purposes may construct, operate and maintain refuse resource recovery, disposal or incinerator plants, and establish, operate and maintain sanitary landfills, acquire the necessary lands therefor, and purchase, operate and maintain all necessary appliances appurtenant thereto, including

such vehicles as may be required for the collection and resource recovery or disposition thereof; or the town board may contract for the collection and resource recovery or disposal of animal or vegetable refuse, ashes, garbage or any waste matter, and for that purpose may award one or more contracts for a period not exceeding ten years for the collection and twenty years for the resource recovery or disposal thereof for all refuse and garbage districts in such town or separate contracts for each district or part thereof. Whenever the town board may determine it advantageous so to do, it may employ a sufficient number of persons and provide the necessary equipment to collect such garbage, refuse and waste matter, at the expense of said refuse and garbage district.

(b) Upon a petition as provided for in section one hundred ninety-one of this article, provide for the prevention or reduction of waste matter consisting of carbon components of energy waste from residential properties and the performance of energy audits and the purchase and installation of energy efficiency improvements on such residential properties. The term "energy efficiency improvement", as used in this subdivision, shall mean a material improvement made to an existing residential property that reduces energy consumption, including but not limited to caulking, weatherstripping, air sealing, insulation, heating and cooling systems upgrades, solar thermal systems and conservation measures, in a cost-effective manner as determined by the town, provided, however, that "energy efficiency improvement" does not include a household appliance, such as a washing machine or refrigerator, that is not permanently fixed to real property. The term "energy audit", as used in this subdivision, shall mean a formal evaluation by a qualified contractor, who shall be approved by the town board, of the energy consumption of a residential property for the purpose of identifying methods to improve energy efficiency and reduce energy waste.

(c) Establish from time to time, charges, fees or rates to be paid by users for refuse and garbage collection service and may provide for the payment of said charges in advance. Such charges, fees or rates may be based upon the volume of refuse, garbage, ashes, rubbish and other waste matter collected, making a proper allowance for commercial or industrial establishments, the number of calls per month, the number of persons or families served in the district, or upon any other equitable basis as

the town board may determine. The town board may also establish from time to time charges, fees or rates to be paid by those who have had energy audits performed and energy efficiency improvements installed or implemented on residential properties. Such charges shall be a lien upon the real property for which or in connection with which the services are rendered.

(d) Provide by ordinance, rule or regulation for the time within which rates, charges or fees for the refuse and garbage collection service or for energy audits and energy efficiency improvements shall be paid, and may provide a penalty not exceeding ten per centum of the amount due, when such rates, charges or fees are in arrears for thirty days, or longer. The town clerk shall annually file with the town board statements showing unpaid rates, charges or fees in such districts. Such statements shall contain a brief description of the property for which or in connection with which the refuse and garbage collection service was provided, or on which the energy audits were performed and energy efficiency improvements were installed, the names of the persons or corporations liable to pay the same and the amount chargeable to each. The supervisor shall transmit such statements to the board of supervisors which shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax rolls of such town under the name of "refuse and garbage charges." Such tax shall be paid to the supervisor of such town. All the provisions of the existing tax laws of the state of New York covering the enforcement and collection of unpaid town taxes or assessments for special improvements in the several towns of the state of New York, not inconsistent herewith, or for energy audits and energy efficiency improvements shall apply to the collection of such unpaid charges for the collection of refuse and garbage. All such rates, charges and fees shall be used for the payment of the cost of the management, maintenance and operation of the refuse and garbage collection service, or the enlargement or extension of the facilities thereof or the improvement of services therein, or for the cost of the management, maintenance and operation of performing energy audits and purchasing and installing energy efficiency improvements.

(e) Adopt from time to time ordinances, rules and regulations for the collection of garbage, ashes, rubbish and other waste matter in the

refuse and garbage districts in the town and the use of the equipment therein, and in addition to the remedies provided in section one hundred thirty-five of this chapter for the enforcement thereof or for the punishment of violators, the town board may enforce compliance with such rules, ordinances and regulations by discontinuing the refuse and garbage collection service.

10. Public dock districts. After a public dock district shall have been established, the town board may contract for the construction of a public dock, either under an entire contract or in parts or sections as the board may determine, and may acquire such real property as the board may deem necessary for the construction and maintenance of such public dock and its approaches but the cost thereof shall not exceed the amount stated in the petition or in the final order, if the town board proceeded under article twelve-A of this chapter. The board shall also have authority to provide for the maintenance thereof and to establish rules for its use.

10-a. Beach erosion control districts. After a beach erosion control district shall have been established, the town board may take such action as may be required to arrest erosion in such district and prevent or alleviate damage resulting therefrom and to contract for or to construct such jetties, groins, fills, bulkheads or other works or improvements as may be necessary to carry out its purpose.

10-b. Sidewalk districts. After a sidewalk district shall have been established, the town board may construct or contract for the construction of sidewalks within the district as it may determine to be necessary or desirable. The board shall also have authority to provide for the maintenance thereof.

10-c. After a fallout shelter district shall have been established, the town board may acquire, construct, install and maintain a fallout shelter or shelters within the district as it may determine to be necessary or desirable for the protection, safety and health of the persons residing within such district, and acquire, store and maintain appropriate materials and supplies therein, subject to the applicable

provisions of the New York state defense emergency act.

10-d. Harbor improvement districts. After a harbor improvement district has been established, the town board may take such action as may be required to adopt plans and specifications and enter into a contract or contracts for harbor improvements within the district as it may determine to be necessary or desirable. The board shall also have authority to provide for the maintenance thereof.

10-e. Aquatic growth control district. After an aquatic growth control district has been established, the town board may take such action as may be required to adopt plans and specifications and enter into a contract or contracts, or take such other action as may be required, for the control of aquatic growth within the district as it may deem to be necessary or desirable. For purposes of this chapter, "aquatic growth" means aquatic invertebrate species and aquatic plants, identified as invasive pursuant to title seventeen of article nine of the environmental conservation law.

10-f. Ambulance districts. After an ambulance district has been established, including ambulance districts established prior to the effective date of this subdivision pursuant to this article and article twelve-A of this chapter or any other provision of law, the town board may:

(a) provide an emergency medical service, a general ambulance service, or a combination of such services for the purpose of providing prehospital emergency medical treatment or transporting sick or injured persons found within the boundaries of the district to a hospital, clinic, sanitorium, or other place for treatment of such illness or injury, and to that end may:

(i) Acquire by gift or purchase one or more motor vehicles suitable for such purpose and supply and equip the same with such materials and facilities as it may consider necessary for prehospital emergency treatment, and may operate, maintain, repair and replace such vehicles and such supplies and equipment;

(ii) Contract with one or more individuals, municipal corporations, associations, or other organizations having sufficient trained and

experienced personnel except an emergency rescue and first aid squad of a fire department or fire company which is subject to the provisions of section two hundred nine-b of the general municipal law for operation, maintenance and repair of such emergency medical service or ambulance vehicles and for the furnishing of prehospital emergency treatment;

(iii) Contract with one or more individuals, municipal corporations, associations, or other organizations except an emergency rescue and first aid squad of a fire department or fire company which is subject to the provisions of section two hundred nine-b of the general municipal law to supply, staff and equip emergency medical service or ambulance vehicles suitable for such purposes and operate such vehicles for the furnishing of prehospital emergency treatment;

(iv) Employ any combination of the methods authorized in subparagraphs (i), (ii) and (iii) of this paragraph;

(b) formulate rules and regulations relating to the use of such apparatus and equipment in the provision of emergency medical services or ambulance service, fix a schedule of fees or charges to be paid by persons requesting the use of such facilities, provide for the collection of such fees and charges, or formulate rules and regulations for the collection thereof by the individuals, municipal corporations, associations, or other organizations furnishing service under contract as provided in subparagraph (ii) of paragraph (a) of this subdivision;

(c) purchase or provide insurance indemnifying against liability for the negligent operation of such emergency medical service or ambulance service and the negligent use of other equipment or supplies incidental to the furnishing of such emergency medical service or ambulance service;

(d) provide for the administration and coordination of such emergency medical service or ambulance service including but not limited to operation of an emergency medical communications system and medical control; and

(e) establish by local law a district board of ambulance commissioners, and delegate ministerial functions related to the operation of the ambulance district to the commissioners. The district board of ambulance commissioners shall act in an advisory capacity to the town board with regard to other functions related to the operation of the district.

The town board may appoint members to the district board of ambulance commissioners or may provide that the commissioners be elected pursuant to the procedures in article thirteen of this chapter for the election of improvement district commissioners. If appointed by the town board, the town board shall appoint the members to terms so fixed that at least one will expire at the end of each calendar year. No term shall exceed three years.

10-g. Watershed protection improvement district. After a watershed protection improvement district has been established, the town board may take such action as may be required to adopt plans and specifications and enter into a contract or contracts, or take such other actions as may be required, for the protection and restoration of groundwater, surface waters, and drinking water quality as it may deem to be necessary or desirable, including but not limited to stormwater treatment projects and wetland construction.

11. Contracts. All contracts authorized by the provisions of this article shall be executed by the signatures of a majority of the members of the town board. Every contract on behalf of an improvement district shall specify the particular district on behalf of which the town board shall be acting. No contract shall be awarded for the performance or supplying of services in a district if the total annual expense of providing such services shall exceed the maximum amount, if any, stated in the petition for the establishment or extension of the district, or in the final order, if the town board is proceeding under article twelve-A of this chapter, unless such maximum amount shall have been increased pursuant to section two hundred two-d of this chapter.

12. Sale or lease of property. (a) Except as otherwise provided in subdivision eight of section two hundred fifteen of this chapter, real or personal property owned by, but not required for the purposes of, any improvement district may be sold or leased by the town board, provided, however, that if the property sold or leased has a value in excess of one thousand dollars, a public hearing shall be held as herein provided.

Notice of such hearing shall be published at least once in the official newspaper of the town not less than ten nor more than twenty days prior to the day specified for the hearing. The notice shall specify the time when and place where such hearing will be held, and shall describe the property proposed to be sold or leased and the proposed terms of the sale or lease. The receipts from the sale or lease of such property shall be paid to the supervisor of the town and credited to the district and may be expended for any purpose which would properly be charged against the entire district.

(b) Notwithstanding any other provision of this chapter, the town board or the commissioners of a district with the approval of the majority of the town board may sell all or any part of the property and facilities of an improvement district 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 sale shall have been approved by a majority vote of the qualified electors of the district voting thereon. Such referendum shall be held in the manner prescribed in article six of this chapter and eligibility to vote shall be determined as prescribed in section eighty-four of this chapter in the case of districts. In the event that all or any part of the property and facilities of an improvement district is purchased by a county, a city, a village, a town, a town on behalf of an improvement district or a county on behalf of a county district, the town board may by agreement with the purchaser provide that payment of the purchase price, in whole or in part, shall be made by having the principal of and interest on obligations issued to finance the cost of the property and facilities so sold, assumed by the purchaser. The town board or the commissioners of a district with the approval of the majority of the town board may lease for a term not to exceed forty years all or any part of the property and facilities of an improvement district to a county, a city, a village, a town, a public authority, a town on behalf of an improvement district or 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 except

that in the case of districts the petition required by section ninety-one of said article 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 district, as shown upon the latest completed assessment-roll of the town in which the district is located, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser. For the purposes of this section, 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 proposition submitted must be approved by the affirmative vote of a majority of the owners of taxable real property situate in the district as shown upon the latest completed assessment-roll of the town, voting on such proposition. The provisions of this paragraph (b) as to leasing of facilities shall apply to joint water districts existing by virtue of and governed by the provisions of section three hundred forty-one, subdivision twelve of this chapter.

(c) The proceeds of the sale of a part of the property and facilities of a district or of the lease of all or a part of the property and facilities of a district shall be deposited in a reserve fund established for the purpose of retiring outstanding obligations issued on behalf of the district to finance the cost of the property and facilities sold or leased and shall be expended only for such purpose, except as provided below. If the proceeds exceed the sum of all installments of principal of and interest on such indebtedness due to or become due, or the payment of principal of and interest on obligations is assumed as provided in paragraph (b) above, or if, when all such outstanding obligations shall have been retired, any moneys remain unexpended in the reserve fund, such excess moneys may be used for any purpose properly chargeable against the entire district.

(d) If it is proposed that all of the property and facilities of the district be sold, the proposition submitted to referendum shall provide as a part thereof, for dissolution of the district as well as for sale

of such property and facilities. If the proposition for sale and dissolution is approved, the moneys received from such sale must be set aside in a reserve fund and used to amortize outstanding obligations, as provided in paragraph (c) of this section. Any excess over and above the amount necessary to be set aside in a reserve fund and used to retire indebtedness, as aforesaid, together with any other moneys of the district, shall be disposed of to the credit of real property within the district by any equitable method described in the proposition submitted to referendum.

(e) If no provision for distribution of excess proceeds is made in the proposition, then such proceeds shall be apportioned on the basis of assessed valuation among the several parcels of land situated in the district, as shown on the last completed assessment roll of the town or county, as the case may be. The amounts so apportioned shall be credited to each such parcel of real property in reduction of the county and town taxes on so many successive tax rolls as may be necessary to exhaust such amounts. If there be any real property in the district which is wholly exempt from general taxation but which, while exempt from general taxation paid as an assessment for benefit a proportionate share of the cost of the improvement, the amount apportioned to such real property shall be refunded to the owner or owners thereof as shown on the last completed assessment roll at the time of distribution.

13. Change of name. The town board may adopt a resolution changing the name of an improvement district. Within ten days after the adoption of such resolution a certified copy thereof shall be filed in the office of the town clerk, in the office of the clerk of the county in which the town is located and in the office of the state department of audit and control at Albany, New York.

§ 198-a. Special districts for disposal of duck waste in Suffolk county. 1. The town board of any town in Suffolk county is hereby authorized to create a special waste disposal district, or more than one such district, in said town, outside of any incorporated village or city, the area of which said special waste disposal district shall be less than the territorial limits of said town, for the purpose of

constructing, maintaining and operating within said special waste disposal district a treatment and disposal plant and other facilities, including the acquisition of necessary land and rights in land, to provide for the collection, treatment and disposition, or either, of duck waste. Such special waste disposal district shall be created or extended in the manner provided by and pursuant to the provisions of this article relating to the creating or extension of sewer districts and shall embrace only duck farms as hereinafter defined in this section. The territory embraced within any such special duck waste disposal district may be composed of non-contiguous areas or properties. When so created, it shall be deemed to be an improvement district created pursuant to the provisions of this article, and shall be subject to the procedural requirements therein set forth.

2. After a special waste disposal district shall have been established, the town board, as the governing agency thereof, may provide for the collection, treatment and disposition, or either, of duck waste in such district, and for that purpose, may construct, equip, operate and maintain a collection system or a treatment and disposal plant, or both, and pipes and sewer lines and connections thereto, acquire the necessary land and rights in lands therefor, and purchase, operate and maintain all necessary appliances appurtenant thereto, including such vehicles as may be required in connection with the collection, treatment and disposition thereof. The cost of such construction and equipment and the acquisition of such land and rights in land shall be at a cost not to exceed the maximum amount proposed to be expended as stated in the petition. Whenever the town board may determine it advantageous to do so, it may (a) employ a sufficient number of persons and provide the necessary equipment to operate and maintain said collection system or said treatment and disposal plant, or both, at the expense of said district, and (b) establish from time to time, charges, fees or rates to be paid by users for such operation and maintenance and may provide for the payment of said charges in advance. Such charges, fees or rates may be based upon the volume of duck waste treated, or upon any other equitable basis as the town board may determine. Such charges shall be a lien upon the real property for which or in connection with which the services are rendered. The town board

may provide by ordinance, rule or regulation for the time within which rates, charges or fees for such operation and maintenance shall be paid, and may provide a penalty not exceeding ten per centum of the amount due, when such rates, charges or fees are in arrears for thirty days, or longer. The town clerk shall annually file with the town board statements showing unpaid rates, charges or fees in such districts. Such statements shall contain a brief description of the property for which or in connection with which such operation and maintenance was provided, the names of the persons or corporations liable to pay the same and the amount chargeable to each. The supervisor shall transmit such statements to the board of supervisors, which shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax rolls of such town under the name of "duck waste charges". Such tax shall be paid to the supervisor of such town. All the provisions of the existing laws of the state of New York covering the enforcement and collection of unpaid town taxes or assessments for special improvements in the several towns of the county of Suffolk, not inconsistent herewith, shall apply to the collection of such unpaid charges for the treatment and disposition of duck waste. All such rates, charges and fees shall be used for the payment of the cost of the management, maintenance and operation of the duck waste collection, treatment and disposition service, or for the enlargement or replacement of the same. The town board may adopt from time to time ordinances, rules and regulations for the collection, treatment and disposition of duck waste in the special waste disposal districts in the town and the use of the equipment therein, and, in addition to the remedies provided in section one hundred and thirty-five of this chapter for the enforcement thereof or for the punishment of violators, the town board may enforce compliance with such rules, ordinances and regulations by discontinuing the duck waste and other waste matter collection, treatment or disposal service.

3. The expense of the establishment of a special waste disposal district and of constructing a waste disposal system therein, as authorized by subdivision two of this section, shall be assessed, levied and collected from the several lots and parcels of land within the district in the same manner and at the same time as other town charges,

unless the petition for the establishment thereof shall provide that the expense thereof shall be assessed by the town board upon the several lots and parcels of land in said district especially benefited by the improvement in proportion to the amount of benefit which the improvement shall confer upon the same, in which case such expense shall be assessed in such manner.

4. After the improvement has been constructed and completed it shall be maintained by the town board and the expense thereof shall be a charge upon the district in the manner as may be determined by the town board in accordance with subdivision two of this section.

5. Whenever the town board shall determine it necessary to acquire additional lands or rights in land in order to maintain the waste disposal system or to increase, improve and reconstruct the facilities thereof and the appurtenances thereto, it is authorized to do so by following the procedure set forth in section two hundred and two-b of this article.

6. The town board may provide for the payment of the cost of any public improvement hereby authorized by making funds available therefor pursuant to the local finance law. The period of probable usefulness of any public improvement authorized by this act is hereby determined to be twenty-five years. In case the expense of the establishment of the special waste disposal district is to be assessed, levied and collected from the several lots and parcels of land within the district in the same manner and at the same time as other town charges, the provisions of section two hundred thirty-one-a of this chapter shall be applicable. In case the expense of the establishment of the special waste disposal district is to be assessed upon benefited property in proportion to the amount of benefit which the improvement shall confer upon the same, the provisions of section two hundred thirty-one of this chapter shall apply.

7. For purposes of this section, the term "duck waste" shall mean duck excrement, offal and corpses, or any other waste, material or substance resulting from the raising and processing of ducks for commercial use,

and the term "duck farm" shall mean any farm or property on which more than five thousand ducks per year are raised for commercial purposes.

§ 199. Proceedings for lateral sewers, drains or water mains. 1.

Powers of town board. Whenever a sewer, drainage or water district shall have been established by the town board and a trunk system of sewers, drains or water mains shall have been constructed therein or contracted for, the town board, upon a petition, or by a resolution adopted on its own motion, and in the manner hereinafter provided:

(a) May construct lateral sewers, drains or water mains, respectively, in or along any portion of any street or highway or easement acquired for such purpose, in any sewer or drainage district or in any water district in which the expense of establishing the district and of providing improvements therefor must be apportioned and assessed, pursuant to section two hundred two of this chapter, upon the several lots or parcels of land deemed benefited, in proportion to the amount of benefit which the improvement conferred upon the same.

(b) May construct lateral water mains in or along any portion of any street or highway or easement acquired for such purpose, in any water district in which the expense of establishing the district and of providing improvements therefor must be assessed, levied and collected, pursuant to section two hundred two of this chapter, from the several lots or parcels of land within the district in the same manner and at the same time as other town charges.

(c) May construct lateral water mains in or along any portion of any street or highway or easement acquired for such purpose, in any water district in which the expense of establishing the district and of providing improvements therefor was apportioned and assessed, prior to January first, nineteen hundred thirty-four, upon the several lots or parcels of land included in said district in proportion to the area of such lot or parcel of land to the total area of the district.

2. Petition or resolution and hearing thereon. Such petition for the construction of lateral sewers, drains or water mains shall be signed by the owners of real estate fronting or abutting upon either side of the street, highway or easement, or portion thereof, in which it is proposed

to construct the improvement, to the extent of at least one-half of the entire frontage on both sides of said street, highway or easement, or portion thereof. If the proposed improvement will serve the property on only one side of a street, highway or easement, or portion thereof, such petition shall be signed by the owners of real property fronting or abutting upon the side to be served of said street, highway or easement to the extent of at least one-half of the entire frontage on such side of said street, highway or easement, or portion thereof. If any of such real estate shall be owned by persons residing in or along such street, highway or easement, or portion thereof, the petition shall not be acted upon by the town board unless such petition shall be signed by resident owners owning not less than one-half of the aggregate frontage owned by resident owners residing in or along such street, highway or easement, or portion thereof specified in such petition; provided, however, that if such petition shall be signed by the owners of at least eighty per cent of the aggregate frontage on such street, highway or easement, or portion thereof specified in such petition, then the foregoing requirement as to the signatures of resident owners shall not apply thereto. 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, and shall state the maximum amount proposed to be expended for the improvement. A resolution adopted pursuant to subdivision one of this section shall state the improvement proposed, the maximum amount proposed to be expended and the area benefited. When any such petition containing the required signatures shall have been presented or a resolution adopted by the town board on its own motion, the town board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of the petition or adoption of such resolution as the case may be, the improvement proposed, the maximum amount proposed to be expended for the improvement as stated in the petition or the resolution, and specifying the time when and place where said board will meet to consider the petition or the resolution and to hear all persons interested in the subject thereof concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than

ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. The order of the town board providing for a public hearing on a petition or resolution for the construction of lateral water mains pursuant to paragraphs (b) and (c) of subdivision one shall include, in addition to all other matters required to be specified therein, a statement that the cost of such improvement, if constructed, shall be borne by the district at large.

3. Construction of improvement. If the town board shall determine, after such hearing and upon the evidence given thereat, that it is in the public interest to make the improvement, the board shall direct the engineer to prepare definite plans and specifications, and to make a careful estimate of the expense, and with the assistance of the town attorney, or an attorney employed for that purpose, to prepare a proposed contract for the execution of the work. Thereupon the said board shall examine such definite plans, specifications, estimate and the proposed contract, and may reject the same or make such modifications and changes therein as shall seem necessary and desirable. If the estimate of the cost of the improvement as prepared by said engineer exceeds the maximum amount proposed to be expended for said improvement as stated in the petition or resolution, the town board shall adopt an order calling a further public hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. A notice of such further hearing shall be published and posted in the manner hereinabove in this section provided and there shall be included in such notice a statement that the improvement cannot be constructed within the maximum amount proposed to be expended as stated in said petition or resolution, the cost of said improvement as estimated by the engineer, a brief description of the improvement and the place and time at which the board will conduct such further hearing. A copy of such notice shall also be sent by regular mail to the last known address of each person who has signed the petition, but failure to receive said notice shall in no way affect the

validity of any proceedings hereunder. Such further hearing shall be conducted in the same manner as an original hearing upon a petition or resolution. If after such further hearing said board shall determine that it is in the public interest to construct said improvement within the cost estimated by the engineer it shall adopt such definite plans, specifications, estimate and the proposed contract and cause the improvement to be constructed all in the manner hereinbefore in this chapter provided for the construction of trunk sewers, drains and water systems. In any case where such public hearings were held as a result of the adoption of a resolution by the town board in lieu of taking action pursuant to petition, the resolution provided for shall be subject to a permissive referendum in article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of a majority of the owners of real property situate in the proposed benefited area described in the resolution as shown upon the latest completed assessment roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if it is initiated and signed, and acknowledged or proved, or authenticated, in the same manner as a petition for improvements pursuant to this section. Where such petition or resolution is for the construction of a lateral sewer, drain or water main through different streets or highways or easements or portions of streets or highways or easements, such lateral sewer, drain or water main shall be deemed one sewer, drain or water main, and such streets or highways or easements or portions thereof, one continuous street or highway or easement for purposes of this section.

4. Effect of section limited. This section shall not apply to the construction of any lateral sewer, drain or water main described in any map or plan which shall have accompanied the petition or resolution for the establishment of a sewer, drainage or water district, provided that the cost of constructing such lateral sewer, drain or water main together with the cost of every other improvement constructed pursuant to such petition or resolution shall not exceed the maximum amount proposed to be expended as stated in such petition or resolution.

§ 200. Petition for street improvement and proceedings thereon. 1. The owners of real estate fronting or abutting upon either side of a street or highway or private road or right of way used for access to said premises or to a portion thereof to the extent of at least one-half of the entire frontage or bounds on both sides of said street or highway or private road or right of way or portion thereof, may petition the town board or the town board on its own motion may adopt a resolution to improve said street or highway, private road or right of way or portion thereof, by the construction of sidewalks, curbs, gutters, culverts, and other necessary improvements in connection therewith, or by construction and paving of such street or highway or private road, or right of way or portion thereof; but such curbs, gutters, culverts and other necessary improvements shall not be constructed under authority of this section unless a pavement has been constructed prior thereto or is to be constructed at the same time upon said street, highway, private road, right of way or portion thereof.

2. If the proposed improvement will serve the property on only one side of a street, highway, private road or right of way, or portion thereof, the petition for such improvement shall be signed by the owners of real property fronting or abutting upon the side to be served of said street, highway, private road or right of way to the extent of at least one-half of the entire frontage on such side of said street, highway, private road or right of way, or portion thereof.

3. Streets or highways which may be improved pursuant to this section shall include the portion of any state highway or county road which lies within the town. No state highway shall be improved pursuant to this section until the commissioner of transportation shall consent thereto and approve the plans and specifications which shall be prepared therefor as hereinafter provided. No county road shall be improved pursuant to this section until the county superintendent of highways shall consent thereto and approve the plans and specifications which shall be prepared therefor as hereinafter provided.

4. Before any such street, highway, private road or right of way or portion thereof other than a state highway or a county road shall be

improved pursuant to this section, the town board shall cause it to be surveyed, and the lines and grades thereof to be established and such survey and a profile of the grade shall be filed in the town clerk's office.

5. But if there be any resident owners, no petition for improvements shall be of any force or effect, nor shall such petition be acted upon by said board unless thereon appear the signatures of resident owners owning not less than one-half of the frontage owned by resident owners residing in or along the street or highway or private road, right of way or part of street or highway or private road or right of way covered or represented by such petition; provided, however, that if such petition shall have thereon the signatures of owners of real estate fronting or abutting upon either side of the street or highway or private road, right of way or portion of street or highway or private road or right of way covered or represented by such petition to the extent of at least eighty per centum of the entire frontage or bounds, then the foregoing requirements as to signatures of resident owners shall not apply thereto.

6. Such petition for improvements 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, and shall state the maximum amount proposed to be expended for the improvement. A resolution adopted pursuant to subdivision one of this section shall state the improvement proposed, the maximum amount proposed to be expended and the area benefited.

7. When a petition for improvement containing the required signatures shall have been presented or a resolution adopted by the town board on its own motion, the town board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition or adoption of such resolution as the case may be, the improvement proposed, the maximum amount proposed to be expended for the improvement and the area benefited as stated in the petition or the resolution, and specifying the time when and the place where said board

will meet to consider the petition or resolution and to hear all persons interested in the subject thereof concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter and conspicuously in five public places along the street or highway or private road or right of way or portion thereof to be improved not less than ten nor more than twenty days before the day designated for the hearing as aforesaid.

8. If the town board shall determine after such hearing and upon the evidence given thereat, that it is in the public interest to make the improvement, the board shall direct the engineer to prepare definite plans and specifications and to make a careful estimate of the expense, and with the assistance of the town attorney or an attorney employed for that purpose, to prepare a proposed contract for the execution of the work. Thereupon the said board shall examine such definite plans, specifications, estimate and the proposed contract, and may reject the same or make such modifications and changes therein as shall seem necessary and desirable.

9. If the estimate of the cost of the improvement as prepared by said engineer exceeds the maximum amount proposed to be expended for said improvement, the town board shall adopt an order calling a further public hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. A notice of such further hearing shall be published and posted in the manner hereinabove in this section provided and there shall be included in such notice a statement that the improvement cannot be constructed within the maximum amount proposed to be expended, the cost of said improvement as estimated by the engineer, a brief description of the improvement and the place and time at which the town board will conduct such further hearing. A copy of such notice shall also be sent by regular mail to the last known address of each person who has signed the petition, but failure to receive said notice shall in no way affect the validity of

any proceedings hereunder. Such further hearing shall be conducted in the same manner as the original hearing upon the petition or resolution.

10. If after such further hearing said board shall determine that it is in the public interest to construct said improvement within the cost estimated by the engineer it shall adopt a resolution providing for such definite plans, specifications, estimate and the proposed contract and cause the improvement to be constructed all in the same manner as hereinbefore in this chapter provided for the construction of trunk sewers, drains and water systems. Where necessary, provision shall be made in such resolution for acceptance of any outstanding offer of dedication of such street, highway, private road or right of way. In any case where such public hearings were held as a result of the adoption of a resolution by the town board in lieu of taking action pursuant to petition, the resolution provided in this subdivision shall be subject to a permissive referendum in article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of a majority of the owners of real property situate in the proposed benefited area described in the resolution as shown upon the latest completed assessment roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if it is initiated and signed, and acknowledged or proved, or authenticated in the same manner as a petition for improvements pursuant to this section.

11. Where such petition or resolution is for the construction of sidewalks, curbs, gutters, culverts and other necessary underground works in connection therewith along different streets or highways or private roads or rights of way or portions of streets or highways or private roads or rights of way, such construction of streets or highways or private roads or rights of way or portions thereof shall be deemed one continuous street or highway or private road or right of way for the purposes of this section.

12. Where the petition or resolution seeks the improvement of such a street or highway or private road or right of way not previously dedicated, the amount to be expended for the improvement shall include

the cost of the proceeding to acquire so much land as may be necessary to lay out such highway and the cost of the land and the town board shall in making its determination authorize and direct the town superintendent of highways to take and complete condemnation proceedings pursuant to the applicable provisions of law and the town superintendent shall take and complete such proceedings before such determination shall become final.

13. Any such street or highway or private road or right of way not previously dedicated shall not be less than three rods in width, provided however, that upon certification in writing by the commissioner of transportation, of the necessity therefor and the filing of such certification in the office of the town clerk of such town, any such highway may be of such width less than three rods as the commissioner shall specify in such certificate.

14. Any street or highway or private road or right of way improved or laid out under this section shall after such improvement is constructed, be maintained as a public highway under the applicable provisions of law and not as a charge against such real property, anything in this article to the contrary notwithstanding.

§ 200-a. Construction and repair of sidewalks pursuant to order of town board. Whenever the town board shall have adopted an ordinance, rule or regulation pursuant to the provisions of article nine of this chapter, describing how sidewalks shall be built in such town, the town board may adopt orders from time to time, directing the owners of the respective lots and parcels of land abutting on any street, or, in towns of the first class, with the consent of the county superintendent of highways or the state commissioner of transportation, as the case may be, abutting on a county or state highway within the town, along which it is desired that sidewalks be built, relaid or repaired, to construct the same to conform with such ordinance, rule or regulation, and specify the time within which the same shall be done. The town clerk shall give notice thereof by certified mail addressed to each such owner at his address as it appears upon the assessment roll of such town or, in the

alternative, by publication of a notice thereof in the official paper at least twice, the first publication of which shall be at least fifteen days before the time specified for the completion of the work. If, within the time prescribed in the order and notice, the sidewalks required to be built, relaid or repaired shall not have been so built, relaid or repaired, then the board may cause the same to be done and audit and pay the expense of doing the same and assess the expense thereof against the property benefited as a whole, or any five or less annual installments, in the same manner as street improvements constructed pursuant to section two hundred of this chapter.

If such expense be assessed in installments, there shall be assessed as part of each installment, except the first, as interest, an amount not exceeding six per cent of such installment such rate to be fixed by the town board in the order providing for the assessment. The provisions of law applicable to the sale of tax liens shall apply to any unpaid assessed installment with the interest thereon in the same manner as though such installment and interest had been assessed as an assessment payable as a whole. Unassessed installments shall be prepayable at any time with interest computed thereon at the aforesaid rate from the date of assessment of the first installment to the date of payment of the particular installment.

If such expense be assessed as a whole and the town board resolution assessing such expense against a particular piece of property shall so provide, the assessment against such property may be paid in five or less annual installments on the dates fixed by such resolution with interest, not exceeding six per cent of each such installment, fixed by such resolution.

The town board may adopt a local law apportioning the expense of building, relaying or repairing any sidewalk within such town between the town and owners of the respective lots and parcels of land abutting any street or county or state highway within the town along which it is desired that sidewalks be built, relaid or repaired.

§ 201. Sewer and water connections. Whenever the town board shall have established one or more sewer or water districts, or both, the town board shall adopt a resolution or ordinance prescribing how sewer or water connections shall be made therein. After the board shall have adopted such resolution or ordinance prescribing how sewer and water connections shall be made, the board may adopt orders, from time to time, directing the owners of the respective lots and parcels of land in front of which it is desired that a sewer or water connection be made, to make the same to conform to such resolution or ordinance and specifying the time within which the same must be done. Before any highway in which sewer or water mains have been laid, shall be paved or otherwise improved, the town board may, in its discretion, direct the owners of adjoining lots or parcels of land to make connections with such sewers or water mains, at the curb line or at the sewer or water main if extensions to the curb line have not been provided, under the supervision of the town board, and in the manner required by the resolution or ordinance, at such a distance apart as the board may prescribe. The town clerk shall publish a notice thereof in the official paper at least twice, the first publication of which shall be at least fifteen days before the time specified for the completion of the work. If, within the time prescribed in the order and notice, the connections required to be made shall not have been so made, then the board may cause the same to be done and audit and pay the expense of doing the same and assess the expense thereof against the property benefited.

§ 202. Expenses of improvement; how raised. 1. The expense of any public improvement made under authority of this article shall include the amount of all contracts, the costs of all lands and interests therein necessarily acquired including the total payments of principal remaining on obligations assumed pursuant to paragraph (b) of subdivision twelve of section one hundred ninety-eight, the costs of erection of necessary buildings for operation or administration of the improvement, printing, publishing, interest on loans, legal and engineering services and all other expenses incurred or occasioned by reason of the improvement or project. The town board, upon the submission of a verified statement of the cost of preparation of the map

and plan accompanying a petition for the establishment of a sewer, wastewater disposal, drainage, water or water quality treatment district, and upon the submission of a verified statement of the cost to petitioners for legal services rendered in a proceeding for establishment or extension of any improvement district, may refund to the petitioners the reasonable cost thereof and include the amount or amounts refunded as a part of the cost of the improvement. In addition, the town board may apportion against and charge to the cost of making any improvement an allowance for any services rendered by the town attorney, town engineer or any salaried town employee, when such services have been necessary to or occasioned by reason of the making of the particular improvement.

2. The expense of the establishment of a sewer, sewage disposal, wastewater disposal, drainage or water quality treatment district and of constructing a trunk sewer or drainage system therein and of constructing lateral sewers, drains and water mains pursuant to paragraph (a) of subdivision one of section one hundred ninety-nine, and of constructing street improvements pursuant to section two hundred shall be borne by local assessment upon the several lots and parcels of lands which the town board shall determine and specify to be especially benefited by the improvement, and the town board shall apportion and assess upon and collect from the several lots and parcels of land so deemed benefited, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same.

3. The expense of the establishment of a park, public parking, water, lighting, snow removal, water supply, water, water storage and distribution, sidewalk, refuse and garbage, aquatic growth control district, ambulance district, harbor improvement district, watershed protection improvement district, public dock district, fallout shelter district, or beach erosion control district, and providing improvements or services, or both, therefor, and of constructing lateral water mains pursuant to paragraph (b) of subdivision one of section one hundred ninety-nine, shall be assessed, levied and collected from the several lots and parcels of land within the district for each purpose in the

same manner and at the same time as other town charges, except as otherwise provided by law. In the event that any order adopted pursuant to section two hundred nine-d of this chapter for the establishment of a water district, sidewalk district, a public parking district, a refuse and garbage district, an aquatic growth control district, lighting district, watershed protection improvement district, or beach erosion and control district or that any petition for the establishment of a water district, sidewalk district, a public parking district, a refuse and garbage district, an aquatic growth control district, lighting district, or beach erosion control district, shall contain a statement that the cost of constructing the water system, sidewalks, lighting system, or acquiring and improving lands for public parking or for refuse and garbage purposes or for beach erosion control, or for watershed protection improvement district or for aquatic growth control, shall be assessed by the town board in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom, the amount to be raised for the payment of the principal and interest of the bonds issued for the construction of the water system, sidewalks, lighting system, or acquiring and improving lands for public parking or for refuse and garbage purposes or for beach erosion control, or for aquatic growth control, or for watershed protection improvement district pursuant to such petition or order, shall be assessed on the lands within such district in the same manner as provided in the case of trunk sewers. The expense of constructing lateral water mains pursuant to paragraph (c) of subdivision one of section one hundred ninety-nine shall be assessed, levied and collected from the several lots and parcels of land within the district in proportion to the area of such lot or parcel of land to the total area of the district.

4. Except as provided in section two hundred four of this article, in all districts in which assessments have heretofore been levied upon an ad valorem basis, assessments shall hereafter be levied upon the same basis. In all districts in which assessments have heretofore been levied upon a benefit basis, assessments shall hereafter be levied upon the same basis.

5. The expense of any extension to an existing water, sewer,

wastewater disposal or drainage district shall include all the costs and expenses occasioned by reason of such extensions and in addition thereto such proportion of the cost of any reservoir or reservoirs, standpipes, water purification works, pumping stations and main water lines, including lands, of the original district and such proportion of the cost of the outfall and trunk sewer and sewage disposal or treatment works including lands of the original district, as the town board shall determine. If the expense of constructing an improvement in a district shall be borne by local assessment upon the lands deemed especially benefited by the improvement and in proportion to the amount of benefit which the improvement conferred upon the same, the expense of an extension to such district shall be borne by local assessment upon the several lots and parcels of land within the extension which the town board shall determine and specify to be especially benefited by the improvement, and the town board shall apportion and assess upon and collect from the several lots and parcels of land so deemed benefited, so much upon each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same. If the expense of constructing or providing an improvement in a district shall be assessed, levied and collected from the several lots or parcels of land within the district in the same manner and at the same time as other town charges, the expense of an extension to such district shall also be assessed, levied and collected from the several lots and parcels of land within such extension in the same manner and at the same time as other town charges.

6. Notwithstanding the provisions of subdivision five of this section, whenever pursuant to section two hundred six-a of this article, all expenses of a district, including all extensions thereto, shall thereafter be charged against the entire area of the district as extended, then the cost of all improvements for the original district and any extensions thereto, together with the cost of any further improvements authorized pursuant to section one hundred ninety-nine or two hundred two-b of this article, shall be assessed against the area of the entire district, as extended, utilizing a single consolidated assessment roll.

§ 202-a. Expense of maintenance. After the improvement is constructed and completed, it shall be maintained by the town board and the expense of such maintenance shall be a charge upon the district or upon the lots or parcels of land against which the expense of the improvement was charged.

1. If the expense of such improvement is required by section two hundred two to be assessed, levied and collected from the several lots and parcels of land in the same manner and at the same time as other town charges, the expense of maintenance of such improvement shall be assessed, levied and collected in like manner.

2. If the expense of such improvement is required by section two hundred two to be apportioned and assessed upon such lots or parcels of land in proportion to the amount of benefit which the improvement shall confer upon the same, the expense of maintenance of such improvement shall be apportioned and assessed in like manner.

3. The commissioners, if there be commissioners, of every district in which the expense of the improvement is required to be apportioned or assessed in proportion to the amount of benefit conferred, and the town board in every other instance, shall annually prepare detailed estimates in writing of the anticipated revenues and expenditures for such district and special improvement for the purpose of determining the amount of money required to meet the expense of maintaining the improvement for the fiscal year commencing on the first day of January next succeeding. Such estimate may contain for contingent purposes, an amount not to exceed ten per centum of the amount estimated as necessary to meet the expense of maintaining the improvement exclusive of the amount necessary to pay debt service and judgments.

4. After such annual estimates have been prepared, the commissioners of the district, or the town board if there be no commissioners, shall annually assess the amount of the estimate of expenditures, less the estimate of revenues as set forth in the estimate so prepared, on the lots and parcels of land against which the expense of the improvement

was charged, in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom and shall prepare an assessment roll which shall describe each such lot or parcel of land in such manner that the same may be ascertained and identified and shall show the name or names of the reputed owner or owners thereof, and the aggregate amount of the assessment levied upon such lot or parcel of land, provided that in towns in the county of Westchester where the anticipated expenditures do not exceed the sum of five hundred dollars, no assessment roll shall be required. The commissioners, or the town board if there be no commissioners, shall file such estimates and the assessment roll with the town clerk between the first and the fifteenth days of September in each year, except that in towns in Westchester county such estimates and assessment roll, if required, shall be prepared and filed with the town clerk at the time set forth in subdivision two of section one hundred six and section one hundred eight of this chapter.

5. The town board shall hold a public hearing thereon in the manner and upon the notice prescribed by section two hundred thirty-nine, except that in towns in Westchester county such hearing shall be held in accordance with the provisions of section one hundred eight of this chapter. After such public hearing, it shall be the duty of the town board to adopt such assessment roll as originally prepared or to amend or change such assessment roll or to prepare a new roll, but no such amended, changed or new roll shall be adopted unless the town board shall hold a hearing thereon in the manner and upon the notice prescribed for the original hearing. Such original, amended, changed or new roll shall be adopted at least thirty days before the annual meeting of the board of supervisors at which taxes are levied in the county in which the town is situated, except that this provision shall not apply to towns in Westchester county.

6. Except in the Keuka Park water district, town of Jerusalem, county of Yates as provided in subdivision six-a of this section, when said assessment roll has been adopted, it shall be filed forthwith in the office of the town clerk. The supervisor shall transmit to the board of supervisors, or other levying body, at the meeting thereof at which taxes are levied, a copy of such assessment roll. It shall be the duty

of the board of supervisors, or other levying body, to levy the sum apportioned to and assessed upon each such lot or parcel of land, in such assessment roll, against such lot or parcel of land at the time and in the manner provided by law for the levy of state, county or town taxes, and in any case where no assessment roll is required, to spread the amount of the levy in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom.

6-a. In the Keuka Park water district, town of Jerusalem, county of Yates, when said assessment roll has been adopted, it shall be filed forthwith in the office of the town clerk. The town clerk shall send to the owner of each lot or parcel of land in such assessment roll not later than January first of the year next ensuing a notice setting forth the sum apportioned to and assessed upon each such lot or parcel of land in such assessment roll. Such notice shall further state that the sum so apportioned and assessed may be paid in one lump sum on or before January thirty-first next ensuing or in such installments between January first and September thirtieth next ensuing as the town board may from time to time designate by resolution. On October fifteenth next ensuing the supervisor shall transmit to the Yates county legislature at the meeting thereof at which taxes are levied a copy of such assessment roll showing the sums apportioned to and assessed upon each such lot or parcel of land and the sums which have been paid thereon to date. It shall be the duty of the Yates county legislature to levy the sum remaining unpaid upon each such lot or parcel of land in such assessment roll against such lot or parcel of land at the time and in the manner provided by law for the levy of state, county or town taxes.

7. The town board may apportion against and charge to the expense of maintaining any improvement an allowance for any services rendered by any town officer or employee when such services have been necessary to and occasioned by reason of the maintenance of an improvement, or the town board may separately compensate any town officer or employee for services necessary to or occasioned by reason of the maintenance of an improvement and include the amount so paid in the expense of such maintenance.

8. The town board shall cause to be prepared estimates required to meet expenses for annual monitoring, testing, operation and maintenance of the water quality treatment district, at the same time as provided in this chapter for the preparation of the tentative budget for the town. Such annual estimates shall contain the anticipated revenue and expenditures for such district for the ensuing year. It shall also show the amount of expenses which shall be apportioned or charged against each lot or parcel within such district in proportion as nearly as may be to the benefit which each such lot or parcel will derive from the service or improvement. After such annual estimates have been prepared, the town board shall cause a notice to be published in the official newspaper, or if none has been designated, a newspaper having general circulation in the town, that the same may be examined in the town clerk's office and that a public hearing will be held thereon by the town board, specifying the time when and the place where such hearing will be held. Such public hearing may be held on the same day as the hearing on the preliminary budget. Such notice shall be published at least five days before such hearing. After such hearing the town board shall adopt such estimates or it may amend and modify the same. If the amount apportioned against any one parcel is increased after the public hearing, the town board shall hold another public hearing on like notice. Such annual estimates and the apportionment against each such parcel shall be adopted by the town board no later than the date of adoption of the annual town budget. After such adoption such annual estimates shall be filed in the office of the town clerk, and the supervisor shall transmit the same to the tax levying body which shall levy the amount apportioned against each parcel or lot at the same time and in the manner provided by law for the levy of town and county taxes. Such amount so levied shall be collected and enforced at the same time and in the manner that town and county taxes are collected and enforced.

§ 202-b. Increase or improvement of facilities. 1. Whenever it shall determine it to be in the public interest, after a public hearing as hereinafter provided, the town board may acquire or construct on behalf of a water, water storage and distribution, ambulance, sewer, sewage disposal or drainage district additional facilities therefor and

appurtenances thereto, other than the construction of a lateral sewer, drain or water main authorized to be constructed pursuant to section one hundred ninety-nine, and including additional lands or interests in lands, or may improve or reconstruct existing facilities and appurtenances. The town board shall cause a map and plan of the proposed improvement together with an estimate of the cost to be prepared by a competent engineer duly licensed by the state of New York. When the map and plan and estimate of cost has been completed, the town board shall call a public hearing thereon and cause a notice thereof to be published and posted in the manner prescribed in section one hundred ninety-three. Such notice shall describe in general terms the proposed improvement or the location of the lands to be acquired, shall specify the estimated expense thereof and state the time when and place where the board will meet to hear all persons interested in the subject matter thereof. If the town board shall decide, after such hearing and upon the evidence given thereat, that it is in the public interest to acquire or construct the proposed improvement, the board shall direct the engineer to prepare definite plans and specifications, and to make a careful estimate of the expense, and, with the assistance of the town attorney or an attorney employed for that purpose, to prepare a proposed contract for the execution of the work. Thereupon the said board shall examine such definite plans, specifications, estimate and the proposed contract, and may reject the same or make such modifications and changes therein as shall seem necessary and desirable, and adopt the same and cause the improvement to be constructed or acquired all in the same manner as hereinbefore provided for the construction of trunk sewers, drains and water systems. In case the purchase of lands only is involved, the town board, if it is determined to be in the public interest, may proceed to purchase such lands.

In like manner, the town board may, after a public hearing held upon due notice, replace obsolete, inadequate, damaged, destroyed or worn-out apparatus and equipment or acquire additional apparatus and equipment. Any cost or expense incurred pursuant to the authority granted by this section shall be a charge against the district and assessed, levied and collected in the same manner as other charges against the particular district. Nothing herein contained shall be construed to prevent the

financing of such cost or expense pursuant to the provisions of the local finance law.

2. The town board may, on behalf of a park, public parking, ambulance, lighting, snow removal, refuse and garbage, public dock, watershed protection improvement district, or beach erosion control district, and within the limitations of section one hundred ninety-eight of this chapter, acquire additional apparatus and equipment and replace obsolete, inadequate, damaged, destroyed or worn-out apparatus and equipment, and it may construct additional facilities and appurtenances thereto or reconstruct or replace obsolete, inadequate, damaged, destroyed or worn-out facilities and appurtenances thereto. Such expenditure shall be authorized in the manner provided in subdivision one of this section, except that the map and plan described by said subdivision one shall not be required. However, nothing herein contained shall be construed to limit or supersede the provisions of section seventy-two hundred three of the education law.

3. The permission of the state comptroller shall not be required for such expenditure, except as hereinafter provided in subdivision five, nor shall the town board be limited by the maximum amount proposed to be expended as stated in the petition, or in the final order, if the town board proceeded under article twelve-A of this chapter, or, in the case of a water storage and distribution district or sewage disposal district, the notice of hearing, for the establishment or extension of the district and the construction of the original improvement, but the town board shall not incur any expense in excess of the amount stated in the notice of hearing.

4. The powers hereinbefore provided in subdivisions one and two of this section may be exercised by the town board on behalf of two or more districts jointly, provided that such districts are wholly situated in the town, and whether or not the districts were established for the same purpose. The notice of hearing shall be published and the hearing held in the manner provided in subdivision one of this section. The cost, including both debt service and operation and maintenance, shall be annually apportioned among the districts by the town board, and the

amounts so apportioned shall be levied and collected in each district as provided in sections two hundred two and two hundred two-a hereof.

5. In any such district which is located in a town wholly or partly within the Adirondack park and which contains state lands assessed at more than thirty per centum of the total assessed valuation of the district as determined from the assessment rolls of the town, as completed from time to time, no such expenditure shall be made or contract let for the purposes authorized in this section, unless the state comptroller, on behalf of the state, shall consent to such expenditure.

§ 202-c. Dissolution and diminishing area of certain districts. 1. The town board of any town may dissolve and discontinue those districts described hereinafter pursuant either to the provisions of article seventeen-A of the general municipal law or the procedures provided in this section.

1-a. Upon a petition, the town board of any town may dissolve and discontinue any lighting, snow removal, water supply, or refuse and garbage district or a sewer district in which no sewer system has been constructed, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district. Such petition shall be signed by at least ten percent or five thousand, whichever is less, of the registered voters in this state registered to vote in such district and authenticated in the manner provided by the election law for the authentication of nominating petitions. When any such petition containing the required signatures shall have been presented, the town board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of the petition, and specifying the purpose thereof, the name and boundaries of the district and the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof concerning the same. If the petition shall propose that the area of the district be diminished, the order shall also describe the portion of the district to be eliminated. The board shall cause a copy of such

order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall cause a copy thereof to be posted on the sign board of the town maintained pursuant to subdivision six of section thirty of this chapter not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. If the town board shall determine, after such hearing and upon the evidence given thereat, that it is in the public interest to dissolve the district or to diminish the area thereof, the town board shall adopt an order accordingly dissolving the district or diminishing its area. If there are any contracts to accomplish the purpose of such district in force and effect, the town board shall not dissolve such district, nor diminish the area thereof, prior to the expiration of such contracts. If the district dissolved be wholly within a village incorporated since said district was formed and prior to April first, nineteen hundred sixty-five, all of the property of such district shall be and become the property of such village and such village upon delivery thereof, shall assume and pay all of the debts of such district. If the district shall not be wholly included within the limits of any village incorporated since said district was formed, all the property of such district shall become the property of the town and such town upon delivery thereof, shall assume and pay all the debts of such district.

2. Whenever the town board of any town shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve and discontinue any sewer, drainage, water, park, public parking, lighting, snow removal, water supply, refuse and garbage, or public dock district, provided that the period of three years shall have elapsed since the date of establishment of such district and that no improvement has been constructed or service provided for such district at any time since the establishment thereof and further provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district.

2-a. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Islip shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve and discontinue, merge or combine any refuse and garbage district or districts, or otherwise amend same or delete services therefrom as proposed by such town board, provided that a period of three years shall have elapsed since the date of establishment of any such district and that no improvement has been constructed for such district at any time since the establishment thereof and, further, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district.

2-b. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Brookhaven shall determine it to be in the public interest, said town board may, upon its own motion and without petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve and discontinue, diminish the size of, extend, merge or combine any refuse and garbage district or districts, or otherwise amend same, change the basis of assessment of properties within the district or districts from ad valorem to benefit, or delete services therefrom or expand services thereto as proposed by such town board, provided that a period of at least one year shall have elapsed since the date of establishment of any such district and that no improvement has been constructed for such district at any time since the establishment thereof and, further, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district. In addition to the above limitations, any resolution of the town board of the town of Brookhaven merging or combining any refuse and garbage districts shall be subject to a permissive referendum in the manner prescribed in article seven of this chapter, except that a petition requesting a referendum shall be sufficient only if signed, and acknowledged or proved, or authenticated, by at least ten percent of the qualified electors residing within each

affected district.

2-c. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Brighton, Monroe county, shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Home Acres, Roselawn, and Bel-Air refuse and garbage districts by deleting therefrom the non-residential properties fronting on Monroe avenue presently included in said districts, provided that a period of three years shall have elapsed since the date of establishment of any such district and that no improvement has been constructed for such district at any time since the establishment thereof and, further provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district on the effective date of any order adopted by the town board pursuant to this subdivision. Any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

* 2-d. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Southeast, Putnam county shall determine it to be in the public interest, said town board may, upon its own motion and without petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve and discontinue the Lakeview Manor Park District, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district.

* NB There are 2 sub 2-d's

* 2-d. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Putnam Valley shall determine it to be in the public interest, said town board may, upon its own motion and without petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve and discontinue any refuse and garbage district or districts, provided that a period of at least one year shall have elapsed since the date of establishment of

any such district and that no improvement has been constructed for such district at any time since the establishment thereof and, further, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district. In addition to the above limitations, any resolution of the town board of the town of Putnam Valley merging or combining any refuse and garbage districts shall be subject to a permissive referendum in the manner prescribed in article seven of this chapter.

* NB There are 2 sub 2-d's

2-e. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Oneonta, in the county of Otsego, shall determine it to be in the public interest, such town board may, upon its own motion and without petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve and discontinue the Pyramid Mall water district, provided that there be no indebtedness outstanding and unpaid, incurred to accomplish any of the purposes of such district.

2-f. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Islip, county of Suffolk shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, dissolve, discontinue, merge or combine any water district or districts, or otherwise amend same or delete services therefrom as proposed by such town board, provided that a period of three years shall have elapsed since the date of establishment of any such district or that no improvement has been constructed for such district at any time since the establishment thereof and, further, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district.

2-g. (a) Notwithstanding the provisions of subdivisions one and two of this section, as well as any other provision of general, special or

local law, rule or regulation to the contrary, whenever the town board of the town of Westerlo, county of Albany, shall determine it to be in the public interest, such town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Westerlo Water District No. 1 by deleting therefrom the lands described in paragraph (b) of this subdivision, provided that said properties have not received any benefit from the water district since its inception.

(b) The lands authorized to be deleted from the Westerlo Water District No. 1 are described as follows:

AREA NO. 1

Beginning at a point in the northerly boundary line of New York State Route 143, said point being the southwesterly corner of tax map parcel 139.09-2-22; thence in a southerly direction across New York State Route 143, 55 feet, more or less, to a point in the southerly boundary line of New York State Route 143, said point also being the northeasterly corner of tax map parcel 139.09-3-22; thence in a southerly direction along the easterly boundary line of said parcel 139.09-3-22, 148 feet, more or less, to a point, said point being the southeasterly corner of said parcel 139.09-3-22; thence in a westerly direction along the southerly boundary line of said parcel 139.09-3-22, 86.05 feet, more or less, to a point, said point being the southwesterly corner of said parcel 139.09-3-23, said point also being in the easterly boundary line of tax map parcel 139.09-3-21; thence in a southerly direction along the easterly boundary line of said parcel 139.09-3-21, 189.72 feet, more or less, to a point, said point being the southeast corner of said parcel 139.09-3-21; thence in a westerly direction along the southerly boundary line of said parcel 139.09-3-21, 99.08 feet, more or less, to a point, said point being the southwest corner of said parcel 139.09-3-21, said point also being in the easterly boundary line of tax map parcel 139.09-3-20; thence in a southerly direction along the easterly boundary of tax map parcel 139.09-3-20, 120 feet, more or less, to a point, said point being the southeast corner of said parcel 139.09-3-20; thence in a westerly direction along the southerly boundary line of said parcel 139.09-3-20, 100 feet, more or less, to a point, said point being the

southwest corner of said parcel 139.09-3-20; said point also being in the easterly boundary line of tax map parcel 139.00-1-30; thence in a southeasterly direction along the easterly boundary line of said parcel 139.00-1-30, 540 feet, more or less, to a point; thence continuing in a southerly direction along the easterly boundary of said parcel 139.00-1-30, 430 feet, more or less, to a point, said point being the southwest corner of tax map parcel 139.00-1-29; thence continuing in a southerly direction along the southerly projection of the last described course and through the lands of the Town of Westerlo Town Park, 755 feet, more or less, to a point; thence in a westerly direction, perpendicular to the last described course and through the lands of the Town of Westerlo Town Park, 1185 feet, more or less, to a point, said point being in the easterly boundary line of County Route 401; thence in a northerly direction along the easterly boundary line of County Route 401, 250 feet, more or less, to a point; thence in a westerly direction across County Route 401, 50 feet, more or less, to a point in the westerly boundary line of County Route 401, said point also being the southeasterly corner of tax map parcel 139.00-1-44; thence in a westerly direction along the southerly boundary line of said parcel 139.00-1-44, 720 feet more or less, to a point, said point being the southwest corner of said parcel 139.00-1-44; thence in a northerly direction along the westerly boundary line of said parcel 139.00-1-44, 220 feet, more or less, to a point, said point being the northwest corner of said parcel 139.00-1-44; thence in a northeasterly direction along the northerly boundary line of said parcel 139.00-1-44, 410 feet, more or less, to a point; thence continuing in an easterly direction along the northerly boundary line of said parcel 139.00-1-44, 400 feet, more or less, to a point, said point being in the easterly boundary line of County Route 401; thence in a northerly direction along the easterly boundary line of County Route 401, 480 feet, more or less, to a point; thence across County Route 401, 50 feet, more or less, to a point, said point being the southeast corner of tax map parcel 139.00-1-45.1; thence in a westerly direction along the southerly boundary line of said parcel 139.00-1-45.1, 305 feet, more or less, to a point, said point being southwest corner of said parcel 139.00-1-45.1; thence in a northerly direction along the westerly boundary line of said parcel 139.00-1.45-1, 390 feet, more or less, to a point, said point being the northwest

corner of said parcel 139.00-1-45.1; thence in an easterly direction along the northerly boundary line of said parcel 139.00-1-45.1, 55 feet, more or less, to a point, said point being the southwest corner of tax map parcel 139.09-1-33; thence in a northerly direction along the westerly boundary line of said parcel 139.09-1-33, 130 feet, more or less, to a point, said point being the northwest corner of said parcel 139.09-1-33; thence in an easterly direction along the northerly boundary line of said parcel 139.09-1-33, 60 feet, more or less, to a point, said point being in the westerly boundary of tax map parcel 139.09-1-31; thence in a northerly direction along the westerly boundary line of tax map parcels 139.09-1-31, 139.09-1-30 and 139.09-1-29, 150 feet, more or less, to a point, said point being the southeast corner of tax map parcel 139.09-1-21, thence in a westerly direction along the southerly boundary line of said parcel 139.09-1-21, 345 feet, more or less, to a point, said point being the southwest corner of said parcel 139.09-1-21; said point also being the southeast corner of tax map parcel 139.09-1-20.2; thence along the southerly boundary line of said parcel 139.09-1-20.2, 71.39 feet, more or less, to a point, said point being the northeast corner of said parcel 139.09-1-18.1; thence in a southwesterly direction along the easterly boundary line of said parcel 139.09-1-18.1, 694 feet, more or less, to a point, said point being the southeast corner of said parcel 139.09-1-18.1; thence in a westerly direction along the southerly boundary line of said parcel 139.09-1-18.1, 288 feet, more or less, to a point, said point being the southwest corner of said parcel 139.09-1-18.1; thence in a westerly and southerly direction along the easterly boundary line of tax map parcel 138.00-2-19, 1925 feet, more or less, to a point, said point being the southeast corner of said parcel 138.00-2-19; thence in a westerly direction along the southerly boundary line of said parcel 138.00-2-19, 480 feet, more or less, to a point, said point being the southwest corner of said parcel 138.00-2-19, thence in a northerly direction along the westerly boundary line of said parcel 138.00-2-19, 2550 feet, more or less, to a point, said point being the northwest corner of said parcel 138.00-2-19, said point also being in the southerly boundary line of tax map parcel 138.00-2-17; thence in a westerly direction along the southerly boundary line of said parcel 138.00-2-17, 230 feet, more or less, to a point in the easterly boundary line of County Route 402;

thence in a northeasterly direction along the easterly boundary of County Route 402, 400 feet, more or less, to a point in the southerly boundary line of County Route 1, thence along the southerly boundary line of County Route 1, 375 feet, more or less, to a point; thence across County Route 1, 65 feet, more or less, to a point, said point being the southwest corner of tax map parcel 139.09-1-14; thence in a northerly direction along the westerly boundary line of said parcel 139.09-1-14, 160 feet, more or less, to a point, said point being the northwest corner of said parcel 139.09-1-14; thence in an easterly direction along the northerly boundary line of tax map parcels 139.09-1-14, 139.09-1-13 and 139.09-1-12, 407.51 feet, more or less, to a point, said point being in the westerly boundary line of said parcel 139.09-1-8.1; thence in a northerly direction along the westerly boundary line of said parcel 139.09-1-8.1, 685 feet, more or less, to a point, said point being the northwest corner of said parcel 139.09-1-8.1, said point also being the southwest corner of tax map parcel 139.00-1-2.1; thence in a northerly direction along the westerly boundary line of said parcel 139.00-1-2.1, 540 feet, more or less, to a point, said point being the northwest corner of said parcel 139.00-1-2.1; thence in an easterly direction along the northerly boundary line of said parcel 139.00-1-2.1, 767 feet, more or less, to a point said point being the northeast corner of said parcel 139.00-1-2.1; thence in a southerly direction along the westerly boundary line of New York State Route 143, 520 feet, more or less, to a point; said point being in the easterly boundary line of tax map parcel 139.09-1-1; thence in an easterly direction across New York State Route 143, 50 feet, more or less, to a point in the easterly boundary line of New York State Route 143, said point also being the northwest corner of tax map parcel 139.09-2-1; thence in an easterly direction along the northerly boundary line of said parcel 139.09-2-1, 748 feet, more or less to a point, said point being the northeast corner of said parcel 139.09-2-1; thence in a southerly direction along the easterly boundary line of said parcel 139.09-2-1, 327 feet, more or less, to a point, said point being the southwest corner of said parcel 139.09-2-1; thence in a southerly direction along the easterly boundary line of tax map parcels 139.0-2-4, 139.09-2-5, 139.09-2-6 and 139.09-2-7, 369.01 feet, more or less, to a point, said point being the northwest corner of tax map parcel

139.09-2-16; thence in an easterly direction along the northerly boundary line of tax map parcels 139.09-2-16, 139.09-2-19, 139.09-2-20 and 139.09-2-21, 492.4 feet, more or less, to a point, said point being the northeast corner of said parcel 139.09-2-21; thence in a southerly direction along the easterly boundary line of said parcel 139.09-2-21, 420 feet, more or less, to the point and place of beginning along the northerly boundary line of New York State Route 143, containing 158.16 acres, more or less, as shown on a map entitled "Proposed Westerlo Water District No. 1", dated January 2002, revised April 20, 2010 and prepared by Stantec Consulting Services, Inc.

AREA NO. 2

Beginning at a point in the westerly boundary line of County Route 412, said point also being the southeast corner of tax map parcel 139.00-1-7; thence in a westerly direction along the southerly boundary line of said parcel 139.00-1-7, 150 feet, more or less, to a point, said point being the southwest corner of said parcel 139.00-1-7; thence in a northerly direction along the westerly boundary line of said parcel 139.00-1-7, 100 feet, more or less, to a point, said point being the northwesterly corner of said parcel 139.00-1-7, thence in an easterly direction along the northerly boundary line of said parcel 139.00-1-7, 25 feet, more or less, to a point, said point being the southwesterly corner of tax map parcel 139.00-1-8; thence in a northerly direction along the westerly boundary line of said parcel 139.00-1-8, 100 feet, more or less to a point, said point being the northwesterly corner of said parcel 139.00-1-8; thence along the westerly projection of the northerly boundary line of said parcel 139.00-1-8, 75 feet, more or less, to a point; thence in a northerly direction along a line parallel to County Route 412, 225 feet, more or less, to a point, said point being 200 feet, more or less, westerly of the westerly boundary line of County Route 412, thence in an easterly direction, 200 feet, more or less, to a point, said point being in the westerly boundary line of County Route 412; thence in a southerly direction along the westerly boundary line of County Route 412 and the easterly boundary lines of said parcels 139.00-1-8 and 139.00-1-7, 425 feet, more or less, to the point and place of beginning, containing 1.69 acres, more or less, as shown on a map entitled "Proposed Westerlo Water District No. 1", dated

January 2002, revised April 20, 2010 and prepared by Stantec Consulting Services, Inc.

AREA NO. 3

Beginning at a point in the easterly boundary line of Anable Road, said point being the southwesterly corner of tax map parcel 128.00-1-27.12, said point also being the northwest corner of tax map parcel 139.00-1-12; thence in an easterly direction along the northerly boundary line of said parcel 139.00-1-12, 350 feet, more or less, to a point, said point being the northeasterly corner of said parcel 139.00-1-12; thence in an easterly direction along the northerly boundary line of tax map parcel 139.00-1-15.3, 450 feet, more or less to a point, said point being the northeasterly corner of said parcel 139.00-1-15.3; thence in a southeasterly direction along the easterly boundary line of said parcel 139.00-1-15.3, 450 feet, more or less, to a point, said point being the southeasterly corner of said parcel 139.00-1-15.3, said point also being the northeasterly corner of tax map parcel 139.00-1-14, thence in a westerly direction along the southerly boundary line of said parcel 139.00-1-15.3, 1050 feet, more or less, to a point, said point being in the easterly boundary line of Anable Road, said point also being the southwesterly corner of said parcel 139.00-1-15.3; thence in a northerly direction along the easterly boundary line of Anable Road, 166.7 feet, more or less, to a point, said point being the southwesterly corner of said parcel 139.00-1-12; thence in a northeasterly direction along the easterly boundary line of Annable Road, 250 feet, more or less, to the point and place of beginning, containing 9.42 acres, more or less, as shown on a map entitle "Proposed Westerlo Water District No. 1", dated January 2002, revised April 20, 2010 and prepared by Stantec Consulting Services, Inc.

3. Sidewalk districts created in towns pursuant to the provisions of chapter sixty-three of the laws of nineteen hundred nine, as amended, or pursuant to the provisions of this chapter as originally enacted or subsequently amended, are hereby dissolved. The improvements constructed in any sidewalk district hereby dissolved shall be and become the property of the town in which the improvements are located, unless any portion of such district shall on January first, nineteen hundred

forty-six, be within a village or city in which event the improvements constructed in any such district, which are located in any such village or city, shall be and become the property of the village or city, as the case may be. Taxes shall continue to be levied within the present area of such districts, as heretofore, for the payment of any debts and liabilities of such districts existing on January first, nineteen hundred forty-six. If any such district shall have moneys on hand on January first, nineteen hundred forty-six, such moneys shall be applied to the payment of the debts and liabilities, if any, of such district and the excess shall be and become the property of the town in which such district is located unless any such district shall be now located wholly within a village or city in which event such excess shall be and become the property of the village or city, as the case may be. If any such district be located in two or more towns, and is not wholly within a village or city, such excess shall be divided among such towns in proportion to the assessed valuations of the properties within such district as shown on the completed assessment rolls for such district pursuant to which the last tax was levied for the purposes of such district.

4. Notwithstanding any other provision of general, special, or local law, rule, or regulation to the contrary, whenever the town board of the town of Southampton, Suffolk county shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Hampton Bays water district by deleting therefrom all lands east of the Shinnecock Inlet within the village of Southampton presently included in said district. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

5. Notwithstanding any other provision of general, special, or local law, rule, or regulation to the contrary, whenever the town board of the town of Huron, Wayne county shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the

notice specified in subdivision one of this section, diminish the Sodus Bay aquatic plant growth control district by deleting all lands in extension 2 consisting of lots 5 through 71 on the water side of Ann Lee Drive, extension 3, consisting of lots 79 through 104 on the water side of Ann Lee Drive and extension 4 consisting of all property on Spiegel Parkway fronting Sodus Bay, consisting of lots 53 through 67 (including lots 56A and 56B) and lots 100 through 112 and all land to the south of that land all to the north of Ridge Road fronting Sodus Bay, all in the town of Huron, presently included in said district. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to permissive referendum pursuant to article seven of this chapter.

6. (a) Notwithstanding any other provision of general, special or local law, rule, or regulation to the contrary, whenever the town board of the town of Chester, Warren county shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Pottersville water district by deleting therefrom the lands described in paragraph (b) of this subdivision located in the hamlet of Pottersville and presently included in said district. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

(b) The lands authorized to be deleted from the Pottersville water district is described as follows:

All that parcel of land located in and near the Hamlet of Pottersville in the Town of Chester, Warren County, New York being part of lands shown on "Map Proposed Water District Pottersville" dated April 15, 1946 by E. D. Collamer, C. E. and surveyed by G. J. Weaver in October 1945, said map being duly filed in the Office of the Clerk for the Town of Chester, said parcel being more particularly bounded and described as follows:

Beginning at the point of intersection of the centerline of the New York State Highway leading northerly from Loon Lake to Pottersville and

more commonly known as Route #9 with the southerly line of the former Lighting District #2 in the Town of Chester, New York, which said point of beginning lies in the southerly line of the said Water District and running

Thence along the southerly line of said District and accordance to the true meridian North 75° East, 500 feet to the southeasterly corner of said District;

Thence along said easterly line of same North 04° 50' West, approximately 600 feet to a point in the southerly boundary of lands reputedly of Russell and Duell known as Lot No. 1 on a plat entitled "Dalaba Subdivision" originally dated April 22, 1991 by James P. Hughes, P.L.S. and filed in the Warren County Clerk's Office on August 29, 1991,

Thence according to the magnetic meridian South 65° 30' 50" West, along said southerly boundary approximately 270 feet to a tall iron pipe in the westerly boundary of said lot No. 1;

Thence North 28° 47' 40" West, along said westerly boundary, 414.54 feet to an iron pipe found in the easterly boundary of said Route 9;

Thence Northeasterly, along said easterly boundary, the following four courses:

- 1.) North 28° 10' 30" East, 404.95 feet to a point;
- 2.) North 37° 56' 20" East, 516.24 feet to an iron rod set;
- 3.) North 23° 48' 50" East, 91.91 feet to an iron rod set;
- 4.) North 17° 32' 00" East, 119.91 feet to an iron pipe found;

Thence continuing northeasterly, along said easterly boundary of Route 9 as it winds and turns, approximately 320 feet to a point lying on the easterly extension of the southerly boundary of lands reputedly of Manifold known as Assessment Map Parcel #52.12-1-3;

Thence Westerly, along said easterly extension (crossing said Route 9), approximately 50 feet to a point in the westerly boundary of said Route 9;

Thence Westerly, along the southerly boundary of said lands of Manifold known as Parcel #52.12-1-3, approximately 20 feet to the east bank of a brook draining from Echo Lake;

Thence Northerly, along said easterly bank as it winds and turns and downstream, approximately 220 feet to a point in the westerly boundary of said Route 9;

Thence Northerly, along said Westerly boundary, approximately 10 feet to a point in the southerly boundary of lands reputedly of Knapp known as Assessment Map Parcel #52.12-1-1;

Thence along said southerly boundary of lands of Knapp known as Parcel #52.12.-1-1 the following three courses:

- 1.) Westerly, approximately 60 feet to a point;
- 2.) Northerly, approximately 80 feet to a point;
- 3.) Westerly, approximately 500 feet to a point in the northeasterly boundary of lands reputedly of Gunning known as Assessment Map Parcel #52-1-10;

Thence Northerly, along said northeasterly boundary and an extension thereof, approximately 200 feet to a point in the westerly boundary of said Water District;

Thence South 09° East, along said westerly boundary as shown on the aforesaid "Proposed Water District" map, approximately 2500 feet to a point marking the southwest corner of said Water District;

Thence North 75° East, along the southerly line of said Water

District, 500 feet to the point of beginning.

7. (a) Notwithstanding any other provision of general, special or local law, rule, or regulation to the contrary, whenever the town board of the town of Byron, Genesee county shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Byron sewer district by deleting therefrom the lands described in paragraph (b) of this subdivision located in the town of Byron and presently included in said district. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

(b) The lands authorized to be deleted from the Byron sewer district is described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Byron, County of Genesee and State of New York, known and distinguished as the south west corner of lot number six in township number one of the 100,000 Acre or Connecticut Tract, so called, bounded as follows, viz: Beginning at a point in the west line of said Lot number six distant three chains eighty-nine links north of the southwest corner thereof, thence north on said west line one chain and fifty links, thence east three chains thirty-seven and one-half links, thence south parallel with the west line one chain and fifty links, thence west parallel with the north line three chains thirty-seven and one half links to the place of beginning, containing land more or less.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Byron, County of Genesee, and State of New York, distinguished as part of lot number 6, township number 1, of the 100,000 Acre or Connecticut Tract, so called, bounded and described as follows: Commencing at the south-east corner of land conveyed by Levi W. Fisk and Nellie, his wife, to Ernest H. Schaufelberger by deed dated August 19th, 1902 in Liber 197 of Deeds, at page 90; thence northerly bounding thereon one chain fifty links to the north-east corner of said lands; thence easterly in a direct line with the north bounds thereof, prolonged fifty-feet; thence

southerly parallel with the first mentioned boundary one chain fifty links; thence westerly in a direct line fifty feet to the south-east corner of the lands first mentioned and to the place of beginning, containing land more or less.

8. (a) Notwithstanding any other provision of general, special or local law, rule, or regulation to the contrary, whenever the town board of the town of Rockland, Sullivan county shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Roscoe sewer district by deleting therefrom the lands described in paragraph (b) of this subdivision located in the town of Rockland and presently included in said district. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

(b) The lands authorized to be deleted from the Roscoe sewer district are described as follows:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Rockland, County of Sullivan and State of New York and described as follows: Beginning at a point in the center of the highway leading from Roscoe to Rockland and in the line dividing lots 21 and 22 and running thence south 62 degrees 45' east 330' passing through crotch of an apple tree standing on the east side of said highway to an iron at end of old fence line; thence along fence line South 22 degrees west 65 feet to an iron; thence north 62 3/4 degrees west 329 feet to a point in the center of highway; thence north 17 1/2 degrees east 65' to place of beginning, containing nearly one-half acre of ground more or less.

9. Notwithstanding any other provision of general, special or local law, rule, or regulation to the contrary, whenever the town board of the town of Hyde Park, Dutchess county, shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the

Greenfields Water District by deleting therefrom the one hundred nineteen townhouse lots which have not since the formation of the district been provided with any water infrastructure or service and presently are included in said district. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum of the property owners in the Greenfields Water District pursuant to article seven of this chapter.

The lands authorized to be deleted from the Greenfields Water District is described as follows:

ALL that certain parcel of land situate in the Town of Hyde Park, County of Dutchess and State of New York and is more particularly described as follows:

BEGINNING at the southerly most corner of Lot 16 as shown on a map entitled "Revised Subdivision Plat Green Fields East" as filed in the Dutchess County Clerk's Office as Map No. 4604; thence easterly along the southerly line of Lot 16 North $79^{\circ}14'00''$ East 122.93 feet to the southeasterly corner of Lot 16; thence northerly along the easterly line of Lots 16-23 and the projection of said line North $10^{\circ}46'00''$ West 168.66 feet to a point on the southerly line of Lot 30; thence easterly along the southerly line of Lots 30 and 31 North $79^{\circ}14'00''$ East 35.66 feet to the southeasterly corner of Lot 31; thence northerly along the easterly line of Lot 31 North $10^{\circ}46'00''$ West 100.00 feet to a point on the southerly line of Russett Road, said point being the northeasterly corner of said Lot 31; thence easterly along the southerly line of Russett Road North $79^{\circ}14'00''$ East 34.34 feet to a point; thence northerly crossing Russett Road North $10^{\circ}46'00''$ West 50.00 feet to the point of intersection of the northerly line of Russett Road and the easterly line of Call Hollow Road; thence northwesterly along said easterly road line along a curve to the right having a radius of 25.00 feet, a central angle of $90^{\circ}00'00''$ and an arc length of 39.27 feet to the southwesterly corner of Lot 196; thence easterly along the southerly line of Lot 196 North $79^{\circ}14'00''$ East 100.00 feet to the southeasterly corner of Lot 196; thence northerly along the easterly line of Lots 196-201 North $10^{\circ}46'00''$ West 120.66 feet to the northeasterly corner of

Lot 201; thence westerly along the northerly line of Lot 201 South 79°14'00" West 100.00 feet to a point on the easterly line of Call Hollow Road, said point being the northwesterly corner of Lot 201; thence northerly along said easterly road line North 10°46'00" West 87.34 feet to its point of intersection with the southerly line of Litchfield Drive; thence northeasterly along said southerly road line along a curve to the right having a radius of 25.00 feet, a central angle of 90°00'00" and an arc length of 39.27 feet to a point; thence northerly crossing Litchfield Drive North 10°46'00" West 50.00 feet to a point of intersection on the northerly line of Litchfield Drive, said point being the southwesterly corner of Lot 107; thence northwesterly along said northerly road line along a curve to the right having a radius of 25.00 feet, a central angle of 90°00'00" and an arc length of 39.27 feet to the point of intersection of the northerly line of Litchfield Drive and the easterly line of Call Hollow Road; thence westerly crossing Call Hollow Road South 79°14'00" West 50.00 feet to a point on the westerly line of Call Hollow Road; thence southerly along said road line South 10°46'00" East 6.68 feet to the northeasterly corner of Lot 1228; thence westerly along the northerly line of Lot 128 South 79°14'00" West 100.00 feet to the northwesterly corner of Lot 128; thence southerly along the westerly line of Lots 128 and 129 South 10°46'00" East 25.31 feet to a point in range with the northerly line of Lots 170-173; thence westerly along a line in range with Lots 170-173, the northerly line of Lots 170-173 and its westerly projection South 79°14'00" West 112.62 feet to a point on the westerly line of File Map No. 4604; thence northerly along said westerly line North 07°40'01" East 454.74 feet to the northwesterly corner of said map No. 4604; thence easterly along the northerly line of map No. 4604 the following three (3) courses:

1. South 72°25'56" East 180.00 feet,

2. South 71°50'56" East 384.20 feet and

3. South 72°49'56" East 262.85 feet

to the northeasterly corner of Map No. 4604; thence southerly along the easterly line of Map No. 4604 the following five (5) courses:

1. South 07°30'57" West 170.03 feet,
2. South 09°05'57" West 218.24 feet,
3. South 06°59'57" West 148.58 feet,
4. South 07°42'57" West 151.40 feet and

5. South 07°52'57" West 266.32 feet
to the southeasterly corner of Map No. 4604; thence westerly along the
southerly line of Map No. 4604 the following four (4) courses:

1. North 72°59'04" West 221.10 feet,
2. North 59°47'03" West 9.80 feet,
3. North 74°01'04" West 194.72 feet and

4. North 72°25'04" West 105.87 feet
to the point or place of BEGINNING and containing 12.897 acres of land,
more or less.

10. (a) Notwithstanding any other provision of general, special or local law, rule, or regulation to the contrary, whenever the town board of the town of Fort Ann, in the county of Washington, shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Lake Hadlock park district by deleting therefrom the parcels of lands described in paragraph (b) of this subdivision located in the town of Fort Ann and presently included in said district, provided that such lands have not received any benefit from such park district since its inception. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

(b) The parcels of lands authorized to be deleted from the Lake

Hadlock park district are described as follows:

PARCEL A

All that piece or parcel of land situate, lying and being in the Town of Fort Ann, County of Washington and State of New York, being bounded and described as follows:

Beginning at a point in the center of Hadlock Pond Road at the intersection of said Hadlock Pond Road with Twiss Road, said point being the northeasterly corner of Lot 1 and the southeasterly corner of the parcel herein described and being 25 feet from a capped iron pin set; running thence along said Lot 1 the following two courses:

S 43 degrees 40' 46" W 188.26 feet passing through said iron pin set to a capped iron pin set;

S 58 degrees 54' 56" W 552.56 feet to a capped iron pin set on the easterly bounds of lands of Mahoney; running thence along said lands of Mahoney

N 12 degrees 56' 54" E 363.49 feet to a capped iron pin at the southwesterly corner of Lot 3; running thence along said Lot 3

N 56 degrees 19' 59" E 618.90 feet passing through a capped iron pin set to a point in the centerline of the aforementioned Twiss Road; running thence along said centerline of Twiss Road the following three courses:

S 00 degrees 11' 59" W 158.11 feet;

S 05 degrees 56' 23" E 80.08 feet;

S 01 degrees 34' 02" W 38.15 feet to the point and place of beginning. Containing 4.020 acres of land.

PARCEL B

All that piece of parcel of land situate, lying and being in the Town

of Fort Ann, County of Washington and State of New York, being bounded and described as follows:

Beginning at a point in the center of Twiss Road approximately 290 feet north of the intersection of said Twiss Road with Hadlock Pond Road, said point being the northeasterly corner of Lot 2 and the southeasterly corner of the parcel herein described and being 25 feet from a capped iron pin set; running thence along said Lot 2

S 56 degrees 19' 59" W 618.90' passing through said iron pin set to a capped iron pin at the southwesterly corner of lands of Gannon; running thence along said lands of Gannon the following two courses:

N 12 degrees 56' 54" E 420.12' to a capped iron pin at the end of a stone wall;

N 54 degrees 46' 56" W 100.00' along said stone wall to a capped iron pin set at the southeasterly corner of Lot 4; running thence along said Lot 4 the following two courses:

N 74 degrees 54' 06" E 127.80' to a capped iron pin set;

N 24 degrees 37' 08" E 308.95' passing through a capped iron pin set to a point in the centerline of the aforementioned Twiss Road; running thence along said centerline of Twiss Road the following six courses:

S 50 degrees 17' 57" E 143.95';

S 48 degrees 34' 58" E 90.83';

S 38 degrees 10' 37" E 78.55';

S 17 degrees 44' 41" E 56.30';

S 03 degrees 54' 28" E 92.35';

S 00 degrees 11' 59" W 78.58' to the point and place of beginning.

Containing 4.700 acres of land.

PARCEL C

All that piece or parcel of land situate, lying and being in the Town of Fort Ann, County of Washington and State of New York, being bounded and described as follows:

Beginning at a point in the center of Twiss Road approximately 560 feet east of the intersection of said Twiss Road with Buttermilk Falls Road, said point being the northerly corner of Lot 3 and the easterly corner of the parcel herein described and being 25 feet from a capped iron pin set; running thence along said Lot 3 the following two courses:

S 24 degrees 37' 08" W 308.95' passing through said iron pin set to a capped iron pin set;

S 74 degrees 54' 06" W 127.80' to a capped iron pin set on the northerly bounds of lands of Gannon; running thence along said lands of Gannon and thence lands of Mahoney the following three courses:

N 54 degrees 48' 56" W 75.19' to a capped iron pin set;

N 51 degrees 51' 16" W 281.11' to an iron pipe at the end of a stone wall;

N 10 degrees 29' 14" E 429.70' along said stone wall and an extension thereof to a point in the centerline of the aforementioned Twiss Road near its intersection with Buttermilk Falls Road; running thence along the centerline of Twiss Road the following four courses:

S 63 degrees 04' 54" E 147.27';

S 56 degrees 31' 04" E 135.66';

S 53 degrees 26' 03" E 77.33';

S 47 degrees 24' 35" E 203.53' to the point and place of beginning.

Containing 4.730 acres of land.

PARCEL D

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Fort Ann, County of Washington and State of New York commencing at a point in the center of an eighteen foot wide macadam surfaced roadway known as the Hadlock Pond Road and being the northwesterly corner of those premises described in a Deed from John R. Ferguson and Joanne M. Ferguson to Robert H. Quinlan and Gloria M. Quinlan dated September 15, 1994 and recorded in the Washington County Clerk's Office on October 3, 1994 in Book 719 of Deeds at Page 221 and from said point or place of beginning on a course of North 69 degrees 58 minutes 00 seconds East to a point on the high water mark of Bishop Brook and being the northeasterly corner of those premises of the said Quinlan; thence in a generally northerly direction and along the high water mark of Bishop Brook as it winds and turns to the northerly boundary line of lands formerly of Hadlock Realty Corporation; thence South 81 degrees 35 minutes 30 seconds West along said northerly line to a point being the northeasterly corner of a lot of land heretofore conveyed to Lawrence Wood and Elizabeth Wood by deed dated May 26, 1964 and recorded in Washington County Clerk's Office June 2, 1964 in Book 393 of Deeds at Page 255, running thence South 33 degrees west along the easterly line of the lands so conveyed to said Lawrence Wood and Elizabeth Wood to the center of said Hadlock Pond Road, thence along the center line of Hadlock Road in a southerly direction to the point or place of beginning.

PARCEL E

ALL THAT CERTAIN PARCEL OF LAND situate in the Town of Fort Ann, Washington County, New York, located on the easterly side of a town highway at the northeasterly end of Hadlock Pond, and which said parcel is bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly edge of the traveled portion of said highway with a line connecting the northerly end of the easterly and westerly abutment of a bridge crossing said roadway, under which flows a stream entering into Hadlock Pond;

running thence from the place of beginning, in a northerly direction, along the easterly edge of said traveled portion of said roadway, for a distance of approximately 283 feet; thence in an easterly direction, on a line which is parallel to and 3 feet distant, southerly, at right angles from the center of two pine trees, the first of which is located just west of the above mentioned roadway, the second being located near the shore of Hadlock Pond, for a distance of approximately 80 feet to the center of the aforementioned stream; thence southerly and southwesterly, along the center line of said stream, for a distance of approximately 480 feet, more or less, to the easterly face of said bridge abutment; thence northerly, along the easterly face of said abutment to the northeast corner of said abutment; thence in a westerly direction, along the northerly face of said abutment and continuing in the same line to the point of beginning which is the easterly edge of the traveled portion of said roadway.

11. (a) Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Queensbury, in the county of Warren, shall determine it to be in the public interest, said town board may, upon its own motion and without a petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the Glen Lake aquatic plant growth control district by deleting therefrom the parcels of land described in paragraph (b) of this subdivision located in the town of Queensbury and presently included in said district, provided that such lands have not received any benefit from such aquatic plant growth control district since its inception. In addition, any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

(b) The parcels of land authorized to be deleted from the Glen Lake aquatic plant growth control district are described as follows:

PARCEL A

31 Glen Lake Road, Town of Queensbury, County of Warren, State of New York

More particularly described in a deed from Mary L. Sicard and Linda L. Sicard to Mary L. Sicard dated February 26, 2015 and recorded in the Warren County Clerk's Office on February 27, 2015 in Book 5119 of deeds at Page 77.

Lot 12. Tax Parcel 289.6-1-17.2. All that certain piece or parcel of land situate lying and being in the Town of Queensbury, County of Warren and State of new York, referenced as Lot 12 in a subdivision of land shown on a map entitled; "Residential Subdivision Sicard Properties" as prepared by W. J. Rourke and Dated March 2014 and filed in the Warren County Clerk's Office on June 13, 2014 at Plat Cabinet C, Slide 358 and being more particularly bound and described as follows:

Beginning at a point on the northerly bounds of lot 10 at the southeasterly corner of lot 11, thence running the following two courses and distances along the easterly then northerly bounds of lot 11; North 5 degrees 54 minutes 15 seconds East 104.80 feet, thence running North 86 degrees 2 minutes 45 seconds West 108.00 feet to a point in the easterly bounds of Glen Lake Road, thence running, along the easterly bounds of Glen Lake Road; North 6 degrees 28 minutes 36 seconds East 94.08 feet to the southwesterly corner of lot 13, thence running, along the southerly bounds of lot 13 South 86 degrees 58 minutes 15 seconds East 189.48 feet to a point being the southeast corner of lot 13 and a southwesterly corner of lot 3, thence running the following three courses along the southerly bounds of lot 3; South 86 degrees 58 minutes 15 seconds East 124.58 feet, then South 51 degrees 57 minutes 12 seconds East 63.98 feet, then South 14 degrees 25 minutes 47 seconds West 26.62 feet to a point being the northwesterly corner of lot 4, thence running, along the westerly bounds of lot 4; South 14 degrees 25 minutes 47 seconds West 60.06 feet to a point on the northerly bounds of lot 10, thence running, along the northerly bounds of lot 10 the following 4 courses and distances; North 50 degrees 14 minutes 46 seconds West 103.93 feet, then North 87 degrees 9 minutes 19 seconds West 39.28 feet, then South 13 degrees 42 minutes 18 seconds west 144.82 feet, then North 86 degrees 2 minutes 45 seconds West 102.86 feet to the point or place of beginning. Said parcel of land to contain 1.003 acres of land more or less.

PARCEL B

Glen Lake Road, Town of Queensbury, County of Warren, State of New York

More particularly described in a deed from Charles O. Sicard to Charles O. Sicard and Mary Sicard dated September 28, 1990 and recorded in the Warren County Clerk's Office on October 18, 1990 in Book 806 of Deeds at Page 189.

Lot 13. tax Parcel 289.6-1-17.3. All that certain piece or parcel of land situate lying and being in the Town of Queensbury, County of Warren and State of New York, referenced as Lot 13 in a subdivision of land shown on a map entitled; "Residential Subdivision Sicard properties" as prepared by W.J. Rourke and dated March 2014 and filed in the Warren County Clerk's Office on June 13, 2014 at Plat Cabinet C, Slide 358 and being more particularly bound and described as follows:

Beginning at a point on the easterly bounds of Glen Lake Road at the northwesterly corner of lot 12, thence running, along the easterly bounds of Glen Lake Road; North 6 degrees 28 minutes 36 seconds East 242.67 feet the point where the easterly bounds of Glen Lake Road and the southerly bounds of Nacy Road intersect, said point being the northwesterly corner of the lot herein described, thence running, along the southerly bounds of Nacy Road; South 86 degrees 58 minutes 15 seconds East 174.89 feet to the northwesterly corner of lot 3, thence running, along the westerly bounds of lot 3; South 3 degrees 1 minute 45 seconds West 242.24 feet to a point on the northerly bounds of lot 12, thence running, along the northerly bounds of lot 12; North 86 degrees 58 minutes 15 seconds West 189.48 feet to the point or place of beginning. Said parcel of land to contain 1.013 acres of land more or less.

PARCEL C

Nacy Road, Town of Queensbury, County of Warren, State of New York

More particularly described in a deed from Charles O. Sicard to

Charles O. Sicard and Mary Sicard dated September 28, 1990 and recorded in the Warren County Clerk's Office on October 18, 1990 in Book 806 of Deeds at Page 189.

Lot 10. Tax Parcel 289.6-1-17.4. All that certain piece or parcel of land situate lying and being in the Town of Queensbury, County of Warren and State of New York, referenced as Lot 10 in a subdivision of land shown on a map entitled; "Residential Subdivision Sicard Properties" as prepared by W.J. Rourke and dated March 2014 and filed in the Warren County Clerks Office on June 13, 2014 at Plat Cabinet C, Slide 358 and being more particularly bound and described as follows:

Beginning, at a point in the northerly bounds of Nacy Road where the same intersects with the easterly bounds of Glen Lake Road, thence running, along the easterly bounds of Glen Lake Road; North 6 degrees, 28 minutes and 36 seconds East 6.05 feet to the southwest corner of lands now or formerly of Godnick, thence running, along the southerly bounds of Godnick; South 86 degrees 58 minutes 15 seconds East 378.01 feet to a point in the northerly bounds of Nacy Road, thence running the following two courses and distances, along the northerly bounds of Nacy Road; South 24 degrees 38 minutes and 45 seconds 6.49 feet, then North 86 degrees, 58 minutes 15 seconds West 375.98 feet to the point or place of beginning. Said parcel of land to contain 0.052 acres of land more or less.

PARCEL D

30 Louise Lane, Town of Queensbury, County of Warren, State of New York

More particularly described in a deed from Charles O. Sicard to Charles L. Sicard dated December 21, 1993 and recorded in the Warren County Clerk's Office on January 04, 1994 in Book 904 of Deeds at Page 309.

Lot 5. Tax Parcel 289.6-1-36. All that certain piece or parcel of land situate lying and being in the Town of Queensbury, County of Warren and State of New York, referenced as Lot 5 in a subdivision of land shown on

a map entitled; "Residential Subdivision Sicard Properties" as prepared by W.J. Rourke and dated March 2014 and filed in the Warren County Clerk's Office on June 13, 2014 at Plat Cabinet C, Slide 358 and being more particularly bound and described as follows:

Beginning at a point on the northerly bounds of lot 10 and the southerly bounds of lot 4 of the above referenced subdivision at the southwest corner of the parcel herein being described, thence running the following three courses and distances along the southerly bounds of lot 4; North 10 degrees 41 minutes 45 seconds East 74.08 feet, then South 82 degrees 21 minutes 19 seconds East 120.81 feet, then South 21 degrees 26 minutes 15 seconds West 26.10 feet to a point on the northerly bounds of said lot 10, thence running the following two courses and distances along the northerly bounds of lot 10; South 21 degrees 26 minutes 15 seconds West 44.87 feet, then North 85 degrees 2 minutes 15 seconds West 107.95 feet to the point or place of beginning. Said parcel of land contains 0.187 acres of land more or less.

12. Notwithstanding any other provision of general, special or local law, rule or regulation to the contrary, whenever the town board of the town of Newburgh, Orange County, shall determine it to be in the public interest, said town board may, upon its own motion and without petition, but after a public hearing held in the manner and upon the notice specified in subdivision one of this section, diminish the size of, extend, merge or combine any lighting district or districts, or otherwise amend same, provided that a period of at least one year shall have elapsed since the date of establishment of any such district and, further, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district. Any order adopted by the town board pursuant to this subdivision shall be subject to a permissive referendum pursuant to article seven of this chapter.

§ 202-d. Increase of maximum amount to be expended. 1. At any time after the establishment of an improvement district the maximum amount proposed to be expended for the improvement in such district, as stated in the petition for the establishment of such district, may be increased

by an order of the town board provided a petition requesting such increase signed as required by section one hundred ninety-one of this article is presented to the town board and provided the town board shall, after a public hearing ordered and held in the manner prescribed by sections one hundred ninety-three and one hundred ninety-four of this article, determine that it is in the public interest to authorize the increase of such maximum amount, and provided the comptroller of the state of New York shall have made as may be required pursuant to subdivision six of section one hundred ninety-four of this article, after such public hearing, an order approving the increase of such maximum amount as stated in the petition. 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.

2. If the petition for establishment of the district proposes only the performance or supplying of certain services, and states the maximum amount to be expended annually for such services, the maximum amount to be expended annually may be increased by an order of the town board provided the town board shall, after a public hearing, determine that it is in the public interest to authorize the increase of such maximum amount. The town board shall give notice of such hearing by publication of a notice in at least one newspaper having general circulation in the district specifying the time when and the place where such hearing will be held and stating the increase proposed in the maximum amount to be expended annually. Such notice shall be published once at least ten days prior to the date specified for such hearing. The approval of the state comptroller to such increase in the maximum amount to be expended annually shall not be required.

§ 202-e. Acquisition and improvement of additional property in park districts. 1. Petition. After the establishment of a park district and the acquisition for park purposes of the property described in the petition for the establishment of the district, the town board upon a petition therefor may acquire additional property for the purposes of such park district, in the manner herein provided. Such petition shall

be signed, and acknowledged or proved, or authenticated, in the manner specified in section one hundred ninety-one for petitions for the establishment of a park district and shall be subject to the requirements of such section as to sufficiency of signers. The petition shall also describe the additional property proposed to be acquired for park purposes and shall state the maximum amount proposed to be expended for the acquisition and improvement thereof.

2. Hearing. Whenever such a petition containing the required signatures shall have been presented to the town board, the board shall adopt an order providing for a meeting to consider such petition and to hear all interested persons and shall cause notice of such hearing to be given in the manner provided in section one hundred and ninety-three. After such hearing and upon the evidence given thereat, the town board shall make the determinations specified in subdivision one of section one hundred and ninety-four.

3. Permission of comptroller. If such board shall determine in the affirmative all the questions set forth in such subdivision and shall approve said petition, an application shall be filed in the office of the state department of audit and control for permission to acquire and improve the additional property described in said petition. Such application shall be executed and filed in the form and manner specified in section one hundred and ninety-four for the execution and filing of an application for permission to create or extend an improvement district and the state comptroller shall make and file an order, in the manner and subject to the restrictions specified in subdivisions three and four of said section, granting or denying such permission. The town clerk shall present the order of the comptroller to the town board at the next meeting thereof.

4. Powers of town board. If the state comptroller shall deny permission for the acquisition and improvement of such property, the town board shall forthwith adopt an order denying the petition. If the state comptroller shall grant permission therefor, the town board may acquire by purchase or condemnation the property described in the petition; provided, however, that no property situated within an

incorporated village or city shall be acquired unless the permission and consent of the legislative body thereof, is first obtained.

After such additional property has been acquired, the town board shall have such powers and shall be subject to such duties in relation thereto as shall be prescribed in subdivision four of section one hundred and ninety-eight in relation to property acquired for park purposes pursuant to the petition for the establishment of such district.

§ 202-f. Construction or installation of certain improvements in state highways and county roads. 1. In the event of the construction, reconstruction or relocation of a state highway or county road in any town outside of an existing water, water storage and distribution, sewer, sewage disposal or drainage district, the town board of such town, after a public hearing as hereinafter provided, may, at the time of such construction, reconstruction or relocation, install or construct such improvements in the right-of-way in such state highway or county road as it may determine to be in the public interest for future use by any such district or extension thereof in such town. The town board shall cause a plan of the proposed improvement and an estimate of the cost thereof to be prepared by the town engineer or, if there be no town engineer, an engineer duly licensed by the state of New York. When the plan and estimate of the cost have been completed, the town board shall call a public hearing thereon and cause a notice thereof to be published in the official newspaper of said town, if any, or if none, in any newspaper which could be designated as the official newspaper of the town, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for said public hearing, and shall also cause a copy of such notice to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter not less than ten nor more than twenty days before the date designated for such public hearing as aforesaid. In the event that the town maintains a website, such information may also be provided on the website. Such notice shall describe in general terms the proposed improvement, shall specify the estimated cost thereof and state the time when and the place where such town board will meet to hear all persons

interested in the subject matter thereof. If the town board shall decide after such public hearing and upon the evidence given thereat that it is in the public interest to install or construct the proposed improvement, such town board shall direct the engineer to prepare definite plans and specifications and make a careful estimate of the expense, and, with the assistance of the town attorney or an attorney employed for that purpose, to prepare a proposed contract for the execution of the work. Thereupon, such town board shall examine such definite plans, specifications, estimate and the proposed contract, and may reject the same or make such modifications or changes therein as shall seem necessary and desirable, and adopt the same and cause the improvement to be installed or constructed in accordance therewith.

2. The expense of any improvement authorized pursuant to this section shall be a town charge and shall be assessed, levied and collected in the same manner and at the same time as other town charges; provided, however, that nothing herein contained shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any improvement authorized pursuant to this section. Any such improvement shall be deemed to be a district or special improvement authorized by article twelve of this chapter within the meaning of subdivision two of paragraph b of section 35.00 of the local finance law. The expense of any such improvement shall not exceed the amount stated as the estimated cost thereof in the notice of the public hearing thereon.

3. The town board may authorize the use of any improvement installed or constructed pursuant to this section by any water, water storage and distribution, sewer, sewage disposal or drainage district, or extension thereof, thereafter established in such town, provided the entire expense of such improvement, together with the expense of the construction of the original improvement for such district or extension, shall not exceed the maximum amount proposed to be expended as stated in the petition, or, in the case of a water storage and distribution district or sewage disposal district, the notice of hearing, for the establishment or extension of such district. Whenever the town board shall authorize the use of any improvement installed or constructed pursuant to this section by any district or extension thereof, the same

shall become a part of such district or extension thereof and the entire cost of such improvement, including the expense of maintenance thereof, shall be a charge against such district or extension and shall be assessed, levied and collected in the same manner as other charges against such district or extension.

4. No improvement shall be installed or constructed within any state highway or county road pursuant to this section until the state commissioner of transportation or the county superintendent of highways, as the case may be, shall have granted his written consent thereto, which consent may be made subject to such conditions as may be determined necessary or desirable to prevent undue interference with the work of constructing, reconstructing or relocating such highway or road.

5. In any town which is located wholly or partly within the Adirondack park which contains state lands subject to taxation assessed at more than thirty per centum of the total taxable assessed valuation of such town as determined from the latest completed assessment roll of such town, no expenditure shall be made or contract let for the purposes authorized in this section, unless the state comptroller, on behalf of the state, shall consent to such expenditure. In all other cases, the consent of the state comptroller shall not be required for any expenditure pursuant to this section.

§ 203. Existing districts preserved. Districts now existing shall continue as now established and shall have all the powers and be governed in the same manner as provided in this act for districts established pursuant to the provisions of article twelve. In the event that any bonds shall have been issued by any town prior to the taking effect of this act, taxes or assessments shall be levied and collected for the payment of the principal and interest of said bonds as they become due pursuant to and in accordance with the statutes and practice relating to such matters in force immediately prior to the time this act takes effect, except as the method of levying such taxes or assessments may have been changed in accordance with the provisions of chapter three hundred thirty-three of the laws of nineteen hundred thirty-four, and

the town board shall have all the powers with respect to such matters conferred by such statutes upon any commissioners or commission appointed, elected, or created pursuant to such statutes, or upon the town board.

§ 204. Transition to benefit basis levy of assessments in existing lighting districts. 1. If and when the town board shall determine it to be in the public interest for an existing lighting district levying assessments by the ad valorem basis on the effective date of this section to convert to the levying of assessments by the benefit basis, the board may adopt a resolution approving the transition to the benefit basis of levying assessments, which resolution shall be subject to a permissive referendum in the manner provided in article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of a majority of the owners of taxable real property situate in the existing district as shown upon the latest completed assessment-roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if signed and acknowledged by the owners of taxable real property situate in the existing district, as shown upon the latest completed assessment-roll of said town, in number equal to at least five percent of the total number of such owners, or by one hundred of such owners, whichever is the lesser. For the purposes of this section, 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 the petition and shall distribute a supply to any person requesting same.

2. (a) If after the expiration of the time for filing a petition requesting that the matter be submitted to a referendum of the property owners of the existing district, no such petition has been filed with the town clerk, he shall file a certificate stating such fact in the office of the county clerk.

(b) If such petition was filed and after the referendum held pursuant to this section, the town clerk shall prepare and file a certificate stating that a petition was filed and a referendum was held pursuant to the provisions of this section and certifying the result of the vote on the proposition submitted at such referendum in the office of the county clerk.

3. If the certificate of the town clerk required to be filed pursuant to subdivision two of this section establishes that no petition was filed requesting a referendum or that such petition was filed and the result of the vote on the proposition submitted at the referendum held pursuant thereto was in the affirmative, the town board shall adopt a final order establishing the transition to the benefit basis.

4. The authority conferred by this section to make such transition shall not be construed to authorize a transition from the benefit basis to the ad valorem basis of levying assessments.

§ 207. Re-establishment of certain water supply districts as water districts.

1. The town board of any town in which a water supply district established prior to the first day of January, nineteen hundred thirty-four, shall exist, may re-establish any such water supply district as a water district in the manner herein provided.

2. Order. The town board of any such town shall adopt an order specifying the time when and place where such town board will meet to consider whether such water supply district shall be re-established as a water district and describing the boundaries of the water supply district to be so re-established.

3. Notice. Notice of such hearing shall be given in the manner provided in section one hundred ninety-three for giving notice of hearings upon petitions for the establishment or extension of improvement districts.

4. Hearing. If the town board shall so determine, a joint hearing may be held upon the re-establishment of two or more water supply districts proposed to be re-established as water districts. After such hearing or hearings, and upon evidence given thereat, the town board shall determine separately with respect to each district, (a) whether it is in public interest to re-establish such water supply district as a water district, and (b) whether all the property and property owners within the district will be benefited by such re-establishment.

5. Re-establishment. If the town board shall determine in the affirmative both questions set forth in the preceding subdivision, the town board may adopt an order re-establishing any such district as a water district and thereafter such district shall be governed, operated and managed and improvements may be made therein in accordance with the provisions of this chapter relating to water districts as now in force or hereafter amended, and the town board shall have such powers for the governing, operation and the management of such water districts and for the making of improvements therein and shall be subject to such duties in relation thereto, as shall be prescribed in said chapter.

6. Recording. A certified copy of the determination or order of the town board shall be duly recorded in the manner provided in section one hundred ninety-five in the office of the clerk of the county in which such town is located and when so recorded shall be presumptive evidence of the regularity of the proceedings of the town board. Any interested person aggrieved by any final determination or order made pursuant to the provisions of this act, may review the same in the manner provided in subdivision two of said section one hundred ninety-five. The said determination or order shall be final and conclusive unless application has been made for review by certiorari within thirty days from the time of recording thereof.

7. Effect of section. The re-establishment of any water supply district as a water district pursuant to this section shall not impair or affect the validity of any obligations issued by the town to provide for the supplying of water in such water supply district nor any tax or

assessment heretofore levied for such purposes on the property within such district, nor any action or proceeding pending in any court at the time this section became effective.

§ 208. Joint administration and operation of special or improvement districts with town functions. The town board of a town may for use in common by one or more special or improvement districts therein and one or more town functions, or combination thereof:

1. Acquire real or personal property.
2. Construct and maintain buildings and other structures.
3. Purchase and maintain equipment, materials and supplies.
4. Contract for services.
5. Transfer or reallocate real or personal property, equipment, material, supplies and personnel between or among such participating districts and functions.

Whenever the powers hereinbefore provided are exercised by the town board on behalf of one or more districts, such expenditure shall be subject to the limitations provided in section two hundred two-b of this chapter and shall be authorized in the manner provided in said section.

Any resolution providing for such joint operation and administration shall fix a method for equitably allocating the cost and expense between or among the various participating districts and functions on a ratio of assessed valuations, or on the basis of the amount of services rendered, or the cost of materials used or other benefit conferred. Any such resolution authorizing the acquisition or transfer of property shall provide for debit, credit or reimbursement of the appropriate fund. The affairs of such joint administration and operation shall be so managed and adjusted that each participating district or function shall bear not more than its equitable share of the common cost and expense.

§ 208-a. Acquisition of land for proposed district. Upon the adoption of a resolution, subject to a permissive referendum, the town board may acquire in the name of the town any lands or rights therein for use by a future district or districts, of one or more types, or extensions thereof in such town.

Any acquisition of such lands or rights therein as herein authorized shall be for the purposes of one or more improvement districts or extensions thereof proposed to be established in such town, and after the establishment thereof such lands shall be utilized for such purposes; provided, however, that in the event such district, districts or extensions thereof are not created or the property becomes unsuitable or undesirable for such district purposes, the property may be used for other town purposes, if practicable so to do, and if not, the property may be sold and disposed of in the same manner as town property no longer needed for town purposes.

2. The expense of any improvement authorized pursuant to this section shall be a town charge and shall be assessed, levied and collected in the same manner and at the same time as other town charges; provided, however, that nothing herein contained shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any improvement authorized pursuant to this section. Any such improvement shall be deemed to be a district or special improvement authorized by article twelve or twelve-A of this chapter within the meaning of paragraph b of section 35.00 of the local finance law.

3. The town board may authorize the use of any property or rights therein acquired pursuant to this section by any district, districts or extensions thereof, thereafter established in such town, in the manner provided in section two hundred eight of this chapter, provided the expense of such acquisition or the proportionate share of the expense as shall be allocated to a district or extension thereof by the town board, together with the expense of the construction of the original improvement for such district or extension, shall not exceed the maximum

amount authorized to be expended in such district or extension. Whenever the town board shall authorize the use of any property or right therein acquired pursuant to this section by any district, districts or extension thereof, the same shall be deemed to be a part of the improvement authorized by such district or extension thereof and the entire cost of such acquisition and the maintenance thereof as apportioned to such district or extension, shall be deemed to be a part of the cost of such improvement and shall be assessed, levied and collected in the same manner as other charges against such district or extension.

§ 208-b. Dissolution of lighting or public parking districts; town of Oyster Bay. 1. Whenever the town board of the town of Oyster Bay, county of Nassau shall determine after a public hearing as hereinafter provided that it is in the public interest to manage, maintain, operate and repair as a town function, pursuant to this article, any improvement or service provided or authorized to be provided by one or more special lighting or public parking districts, it may adopt a resolution dissolving any such lighting or public parking districts wholly located in such town created or existing to provide such improvement or service.

The resolution dissolving the district or districts shall provide for the assessment of the costs of any improvement provided or authorized to be provided by such district or districts, including the principal of and interest on any bonds or other obligations authorized to be issued for the purposes of such district or districts or which have been issued for the purposes of such district or districts and are outstanding and unpaid as of the date of such dissolution, to be borne partly by the area of the town outside of any villages and partly by lands benefited thereby; or by the area of the town outside of any villages; or entirely by lands benefited thereby as the town board, in its discretion, shall determine. Where however, (1) any part of the costs of the 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 improvement shall confer upon such lots or parcels, or (2) any part of the costs of the 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.

2. Any such resolution shall provide that the cost of the management, maintenance, operation and repair of such improvement or service shall thereafter 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.

3. The district or districts shall be dissolved on the first day of January next succeeding the effective date of the resolution dissolving such district or districts provided, however, that if the effective date of such resolution shall be subsequent to the first day of August in any year, the dissolution of such district or districts shall be effective on the first day of January of the second succeeding calendar year.

4. Upon the dissolution of any such district or districts pursuant to this section, the improvement or service provided or authorized to be provided by such district or districts shall thereafter be a town function and the town board shall be responsible for the necessary management, maintenance, operation and repair thereof. All the property of such district or districts shall become the property of the town.

5. The town board shall conduct a public hearing on the proposed dissolution of a district or districts pursuant to this section, on notice published at least ten but not more than twenty days before such hearing in a newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of this chapter and shall also cause a copy thereof to be posted upon the bulletin board in the office of the town clerk. In the event that the town maintains a website, such information may also be provided on the website. Such notice shall specify the time when and the place where such hearing will be held and in general terms, describe the proposed dissolution, and where appropriate, the proposed

basis of apportioning, levying and assessing all improvement costs and shall specifically state that the cost of the management, maintenance, operation and repair of such improvement or service provided or authorized to be provided by the district or districts proposed to be dissolved shall thereafter 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.

6. The town board may complete any improvement authorized to be provided in the district or districts dissolved or to be dissolved and finance such improvement pursuant to the local finance law.

7. The town clerk shall cause a certified copy of any such resolution to be duly recorded in the manner prescribed in section one hundred ninety-five of this article.

ARTICLE 12-A

ESTABLISHMENT OR EXTENSION OF IMPROVEMENT

DISTRICTS--ALTERNATE PROCEDURE

Section 209. Application of article.

209-a. Definitions.

209-b. Appropriation for preparation of maps, plans and reports.

209-c. Maps, plans and reports.

209-d. Notice of hearing; cost to typical property.

209-e. Establishment or extension of districts.

209-f. Application for permission of state comptroller to establish or extend district.

209-g. Recording of determination; review by certiorari.

209-h. Increase of maximum amount to be expended.

209-i. Refuse and garbage improvement districts.

§ 209. Application of article. Notwithstanding any other provisions of this chapter, the town board of any town may, in the manner provided by this article, establish or extend in said town, improvement districts as defined in this article and provide improvements or services, or both,

in any such district, wholly at the expense of the district; but no water supply district shall be established or extended to include lands situate within the boundaries of a water district. Any improvement district as defined in this article established pursuant to this article or otherwise may be extended pursuant to the provisions of this article or any other applicable provision of law. However, this article shall not apply to the extension of any such improvement districts to which the provisions of article thirteen of this chapter are applicable without the prior approval in writing of a majority of the commissioners of such district. No such district shall be established or extended in a city or in an incorporated village provided, however, that such a district may be established or extended wholly or partly within an incorporated village on consent of the village expressed in a local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article five-a of the village law, as the case may be.

§ 209-a. Definitions. For the purposes of this article the following definitions shall apply:

1. the term "improvement district" shall include only a sewer, wastewater disposal, drainage, water, park, public parking, lighting, snow removal, water supply, sidewalk, refuse and garbage, aquatic growth control, or watershed protection improvement district or ambulance district in any town, and, in any town bordering upon or containing within its boundaries any navigable water of this state a public dock or beach erosion control district;

2. the term "typical property" shall mean a benefited property having an assessed value that approximates the assessed value of the mode of the benefited properties situated in the district or extension that will be required to finance the cost of the proposed improvements;

3. the term "typical one or two family home" shall mean a benefited property improved by a one or two family dwelling and having as assessed value that approximates the assessed value of the mode of the benefited

properties improved by one or two family dwellings situated in the district or extension that will be required to finance the cost of the proposed improvements;

4. the terms "cost of the district or extension to the typical property" and "cost of the district or extension to the typical one or two family home" shall mean the amount that is estimated that the owner of such a typical property or home within the district or extension will be required to pay for debt service, operation and maintenance and other charges, such as user charges, related to the improvements in the first year following formation of the district or extension or, if greater, in the first year in which both principal and interest on any indebtedness and operation and maintenance costs will be paid;

5. the term "mode" shall mean, in connection with assessed value of property, the most frequently occurring assessed value as shown on the latest completed final assessment roll.

§ 209-b. Appropriation for preparation of maps, plans and reports.

The town board may adopt a resolution, subject to a permissive referendum in the manner provided in article seven of this chapter, appropriating a specific amount to pay the cost of preparing a general map, plan, and report for providing the facilities, improvements, or services in any portion of the town not included within the boundaries of any incorporated village, city or existing improvement district in which such facilities or services are provided, except that all or part of an incorporated village may be included therein on consent of the village expressed in a local law, ordinance, or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article five-a of the village law, as the case may be. All such maps, plans and reports shall conform with the requirements of section two hundred nine-c of this article. The town board may determine that such maps, plans and reports 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 maps, plans and reports shall be a town charge, and shall be assessed, levied and collected in the same manner as other town charges. If the town board shall thereafter establish or extend such district and construct the improvements or contract for the required services pursuant to the provisions of this article, the expense incurred by the town for the preparation of the maps, plans and reports therefor shall be deemed to be part of the cost of such improvement, or the rendering of such services, and the town shall be reimbursed in the amount paid therefor, or such portion of that amount which the town board, at the public hearing held pursuant to section two hundred nine-d of this article, shall allocate against such district.

§ 209-c. Maps, plans and reports. The establishment or extension of an improvement district shall be based upon a map, plan and report prepared in such manner and in such detail as determined by the town board and such map, plan and report shall be filed in the office of the town clerk. In the case of a sewer, drainage or water district such maps, plans and reports shall be prepared by a competent engineer, duly licensed by the state of New York, showing the boundaries of the proposed district and a general plan of the proposed sewer, drainage or water system, as the case may be, and a report of the proposed method of operation. If a sewer or drainage district is proposed, such map shall show all outlets and the terminus and course of each proposed main sewer or drain together with the location and a general description of all sewage disposal plants, pumping stations and other public works, if any, and shall be consistent with, so far as possible, any comprehensive plan for sewers developed and maintained pursuant to section ninety-nine-f of the general municipal law. If a water district is proposed, said map and plan shall show the source of water supply and a description of the lands, streams, water or water rights to be acquired therefor, the mode of constructing the proposed water works and the location thereof, including reservoirs, water purification or treatment works, water mains, distributing pipes and hydrants, and shall be consistent with, so far as possible, any comprehensive plan for public water supply systems

developed and maintained pursuant to section ninety-nine-f of the general municipal law. If, however, the supply of water to be used in said water district is to be purchased from a municipal or other corporation, or any person, then said map and plan shall set forth and show only the water mains, distributing pipes, hydrants, reservoirs, if any, and location of each. Before any sewer system is constructed in any such district, the town board shall cause a copy of the map and plan of the proposed sewer system and sewage disposal plant or proposed extension thereto to be submitted to the state department of health, and, if approved, it shall be filed in the office of the state department of health and the town clerk. The state department of health may require profiles to be submitted for any sewers or drains shown on such map and plan. Such map and plan may be amended with the approval of the state department of health and if approved, shall be filed in the office of the state department of health and the town clerk.

§ 209-d. Notice of hearing; cost to typical property. 1. Subsequent to the date of the filing of the map, plans and report in the office of the town clerk as required in section two hundred nine-c of this article the town board may adopt an order and enter the same in the minutes of its proceedings reciting a description of the boundaries of the proposed district or extension in a manner sufficient to identify the lands included therein as in a deed of conveyance, the improvements proposed, the maximum amount proposed to be expended for the improvement, the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, the proposed method of financing to be employed, the fact that a map, plan and report describing the same are on file in the town clerk's office for public inspection and specifying the time when and the place where said board will meet and hold a public hearing to hear all persons interested in the subject thereof, concerning the same. If such order proposes only the performance or supplying of certain services, it may state the maximum amount to be expended annually for such services. The board shall cause a copy of such order to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day

set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. Such order may further state such place other than the town clerk's office where the map, plan and report may be examined in advance of the hearing, if the town board determines that, in the public interest, some other additional place is necessary or desirable. If a water district, sidewalk district, a public parking district, a refuse and garbage district, aquatic growth control district, watershed protection improvement district or beach erosion control district is proposed, such order may contain a statement that the cost of constructing the water system, sidewalks or acquiring lands for public parking or for refuse and garbage purposes, or aquatic growth control purposes or for beach erosion control or for watershed protection improvement purposes shall be assessed by the town board in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom. Prior to the publication of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, was computed.

2. (a) If the permission of the state comptroller is not required pursuant to section two hundred nine-f of this article because it is proposed or required that the town in which the district or extension is located shall finance the cost thereof by the issuance of bonds, notes, certificates or other evidences of indebtedness of the town therefor or debt service is proposed to be assumed pursuant to subdivision twelve of section one hundred ninety-eight of this chapter but the cost to the typical property or, if different, the cost to the typical one or two family home is not above the average cost threshold described in such section, a certified copy of the order of the town board adopted pursuant to this section shall also be filed with the state comptroller on or about the date of the publication of a copy of such order.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the state comptroller shall not be precluded from requiring

the submission of additional information or data in such form and detail as the state comptroller shall deem sufficient or from causing an investigation to be made with respect to the establishment or extension of a district or an increase in the maximum amount to be expended.

§ 209-e. Establishment or extension of districts. 1. After the hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the town board shall determine by resolution:

(a) whether the notice of hearing was published and posted as required by law, and is otherwise sufficient;

(b) whether all the property and property owners within the proposed district or extension are benefited thereby;

(c) whether all the property and property owners benefited are included within the limits of the proposed district or extension;

(d) whether the establishment or extension of such district is in the public interest.

2. (a) If the town board shall determine that the notice of hearing was not published and posted as required by law or that it is otherwise insufficient, or if it is determined that it is not in the public interest to accomplish the establishment or extension of the district as proposed, the town board shall adopt a resolution stating the reasons for its determination not to establish or extend the district and enter the same in the minutes of its proceedings.

(b) If the town board shall determine that the notice of public hearing was published and posted as required by law and is otherwise sufficient, and that it is in the public interest to establish or extend such district, either in whole or in part, but shall find that any part or portion of the property or property owners within the proposed district or extension are not benefited thereby or that certain property or property owners benefited thereby have not been included therein, the town board shall specify the necessary changes of the boundaries of the proposed district or extension to be made in order that all of the property and property owners and only such property and property owners as are benefited shall be included within such proposed district or extension, and the board shall call a further hearing at a definite

place and time not less than fifteen nor more than twenty-five days after such determination. Notice of such further hearing shall be published and posted in the manner provided in section two hundred nine-d hereof except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed district or extension. Such further hearing shall be conducted in the same manner as the original hearing.

3. If and when the town board shall determine in the affirmative all of the questions set forth in subdivision one of this section, the board may adopt a resolution approving the establishment or extension of the district as the boundaries shall be finally determined and the construction of the improvement or providing of the service therein, which resolution shall be subject to a permissive referendum in the manner provided in article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of a majority of the owners of taxable real property situate in the proposed district or proposed extended district as shown upon the latest completed assessment-roll of the town, voting on such proposition. 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 prescribed by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment-roll of said town, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser. For the purposes of this section, 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 the petition and shall distribute a supply to any person requesting same.

4. (a) If after the expiration of the time for filing a petition

requesting that the matter be submitted to a referendum of the property owners of the proposed district or proposed extended district, no such petition has been filed with the town clerk, he shall file a certificate stating such fact in the office of the county clerk and, where the permission of the state comptroller is required for the establishment or extension of a district and the construction of an improvement or the providing of a service therein, in the office of the department of audit and control at Albany, New York.

(b) If such a petition was filed and after the referendum held pursuant to this section, the town clerk shall prepare and file a certificate stating that a petition was filed and a referendum was held pursuant to the provisions of this section and certifying the result of the vote on the proposition submitted at such referendum in the office of the county clerk and, where the permission of the state comptroller is required for the establishment or extension of a district and the construction of an improvement or the providing of a service therein, in the office of the department of audit and control at Albany, New York.

§ 209-f. Application for permission of state comptroller to establish or extend district. 1. Unless it is proposed or required that the town in which such district or extension is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefor, or shall assume the debt service on obligations issued to finance the cost of facilities, pursuant to subdivision twelve of section one hundred ninety-eight of this chapter, and, if the state comptroller shall have computed average estimated costs for similar types of districts, the cost of the district or extension to the typical property or, if different, the cost of the district or extension to the typical one or two family home as stated in the notice of hearing is above the average estimated cost to the typical properties or homes for the establishment or extension of similar types of districts as may be annually computed by the state comptroller, the permission of the state comptroller shall not be required for the establishment or extension of a district and the construction of an improvement or the providing of a service therein, including an increase in the maximum amount proposed to be expended for the improvement in a

district, except as otherwise provided by section two hundred two-b of this chapter. The state comptroller annually shall provide to towns notice of the average cost thresholds as may be computed in accordance with this section.

2. Where the permission of the state comptroller is not required pursuant to this section and if the certificate of the town clerk required to be filed pursuant to subdivision four of section two hundred nine-e of this article establishes that no petition was filed requesting a referendum or that such petition was filed and the result of the vote on the proposition submitted at the referendum held pursuant thereto was in the affirmative, the town board shall adopt a final order establishing or extending the district.

3. (a) Except as otherwise provided in subdivision one of this section, within ten days after the adoption of a resolution by a town board approving the establishment or extension of a district and the construction of an improvement or the providing of a service therein, the town clerk of the town shall file a certified copy of such resolution, in duplicate, in the office of the state department of audit and control at Albany, New York, together with an application, in duplicate, for permission to create or extend such district as the case may be. Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following:

(1) A certified copy of the notice of public hearing, with proof of publishing and posting thereof as required by this article, and, in the instance of a sewer, wastewater disposal, drainage or water district, of the map, plan and report filed in the town clerk's office pursuant to section two hundred nine-c;

(2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced by bonds, bond anticipation notes, capital notes, deferred payment notes and budget notes; the amount of budgetary appropriations for the payment of any such outstanding indebtedness, whether or not such appropriations have been realized as cash; the amount of indebtedness proposed to be contracted for the improvement, and the amounts, purposes and probable dates of issuance of

any bonds, bond anticipation notes, capital notes, deferred payment notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application;

(3) A statement of the aggregate assessed valuation of the real property situated in the proposed district or extension thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application;

(4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the provisions of the first paragraph of subdivision seven-a of section 2.00 of the local finance law;

(5) A statement as to the manner in which it is proposed to finance the cost of the improvement.

(b) Whenever such an application shall be filed in the office of the department of audit and control, the state comptroller shall within five days thereafter give notice thereof to the board of supervisors of the county in which such proposed district or extension is located by filing with the clerk of such board of supervisors one copy of such application. At any time within fifteen days of the filing of the application, the board of supervisors may file an objection, in writing, in the office of the department of audit and control.

(c) Thereafter and subsequent to the filing in the office of the county clerk and the department of audit and control of the certificate required to be filed by the town clerk pursuant to subdivision four of section two hundred nine-e of this article, the state comptroller shall determine whether the public interest will be served by the establishment or extension of the district and also whether the cost thereof will be an undue burden upon the property of the proposed district or extension. 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.

4. Upon the expiration of fifteen days from the date of the filing of such application with the clerk of the board of supervisors, the

comptroller shall make an order, in duplicate, granting or denying permission for the establishment or extension of the district 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 district or extension is located. The town clerk shall present such order to the town board of the town at the next meeting thereof. If the certificate required to be filed by the town clerk pursuant to the provisions of subdivision four of section two hundred nine-e of this article states that the proposition submitted at such referendum was disapproved, the comptroller shall return the application to the town clerk without taking any action thereon.

5. If the state comptroller shall deny permission for the establishment or extension of the district, the town board shall forthwith adopt an order terminating its proceedings in connection with the proposed establishment or extension of such district. If the state comptroller shall grant permission therefor, the town board shall adopt a final order establishing the district or extension as the boundaries shall be finally determined.

§ 209-g. Recording of determination; review by certiorari. 1. The town clerk shall cause a certified copy of the final order of the town board adopted pursuant to the provisions of this article, establishing or extending any district, or increasing the maximum amount proposed to be expended for the improvement in any district or extension thereof, or determining to construct any improvement authorized by this article, 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 order or determination by the town board, and when so recorded such determination or order shall be presumptive evidence of the regularity of the proceedings for the establishment or extension of such district, of the proceedings instituted for the construction of such improvement and of all other action taken by said town board in relation thereto.

Within ten days after the adoption of the final order by the town

board establishing or extending a district, the town clerk shall cause a certified copy thereof to be filed in the office of the state department of audit and control at Albany, New York.

2. Any interested person aggrieved by any final determination or order made pursuant to the provisions of this article may review the same in the manner provided by article seventy-eight of the civil practice law and rules provided the proceeding is commenced within thirty days from the date of the recording of the certified copy of the order or determination in the office of the clerk of the county. The said determination or order shall be final and conclusive unless a proceeding to review is commenced within thirty days from the time of recording thereof. No review shall be had unless the petitioner 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 said final determination or order he will pay to the town board, all such costs and expenses as are incurred by it on account of the said proceedings, as shall be determined by the court. In the event that upon such review there shall be any modification by the court of said final determination or order the court shall direct the modification thereof by judgment which shall be final and conclusive and such town board shall cause such judgment to be recorded and filed in the same places and manner as was the determination or order appealed from.

§ 209-h. Increase of maximum amount to be expended. 1. At any time after the establishment of an improvement district or of an extension thereof pursuant to the provisions of this article or any other applicable provision of law, the maximum amount proposed to be expended for the improvement in such district, as stated in the notice of public hearing on the establishment or extension of such district, may be increased by an order of the town board provided that the town board shall, after a public hearing is held in the manner prescribed by section two hundred nine-d of this article, determine that it is in the public interest to authorize the increase of such maximum amount, and provided the comptroller of the state of New York shall have made as may

be required pursuant to subdivision one of section two hundred nine-f of this article, after such public hearing, an order approving the increase of such maximum amount as stated in the said notice of hearing. 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. The order of the town board increasing the maximum amount to be expended shall be subject to a permissive referendum in the manner provided in subdivision three of section two hundred nine-e of this article. The comptroller may not make an order approving the increase in such maximum amount until after the expiration of the time for filing a petition requesting that the matter be submitted to referendum or, if such a petition is filed, unless the vote on the proposition submitted at referendum was affirmative.

2. If the notice of public hearing for the establishment or extension of the district proposes only the performance or supplying of certain services, and states the maximum amount to be expended annually for such services, the maximum amount to be expended annually may be increased by an order of the town board provided the town board shall, after a public hearing, determine that it is in the public interest to authorize the increase of such maximum amount. The town board shall give notice of such hearing by publication of a notice in at least one newspaper having general circulation in the district specifying the time when and the place where such hearing will be held and stating the increase proposed in the maximum amount to be expended annually. Such notice shall be published once at least ten days prior to the date specified for such hearing. The approval of the state comptroller to such increase in the maximum amount to be expended annually shall not be required.

§ 209-i. Refuse and garbage improvement districts. The purpose of a refuse and garbage improvement district created pursuant to this article may include, after complying with the provisions of this article for the establishment of such a district, the prevention or reduction of waste matter consisting of carbon components of energy waste from residential properties and the performance of energy audits and the purchase and

installation of energy efficiency improvements on such residential properties. The term "energy efficiency improvement", as used in this subdivision, shall mean a material improvement made to an existing residential property that reduces energy consumption, including but not limited to caulking, weatherstripping, air sealing, insulation, heating and cooling systems upgrades, solar thermal systems and conservation measures, in a cost-effective manner as determined by the town, provided, however, that "energy efficiency improvement" does not include a household appliance, such as a washing machine or refrigerator, that is not permanently fixed to real property. The term "energy audit", as used in this subdivision, shall mean a formal evaluation by a qualified contractor, who shall be approved by the town board, of the energy consumption of a residential property for the purpose of identifying methods to improve energy efficiency and reduce energy waste.

ARTICLE 12-C

SEWER OR WATER IMPROVEMENTS

Section 209-q. Sewer, drainage or water improvements.

209-s. Water and sewer district tax payments in the town of Carmel, Putnam county.

§ 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.

§ 209-s. Water and sewer district tax payments in the town of Carmel, Putnam county. Notwithstanding any other provision of law to the contrary, the town of Carmel, in Putnam county may correct, by resolution of the town, the omission of certain taxes due and owing by the town of Carmel to the Carmel sewer district #2 and the Carmel water district #2 from nineteen hundred ninety-five to two thousand, with payment of such omitted taxes being made from the town's general fund, and with corrected tax bills thereupon being issued pursuant to section five hundred fifty-four of the real property tax law.

ARTICLE 13

IMPROVEMENT DISTRICT COMMISSIONERS

- Section 210. Application.
211. District commissioners.
- 211-a. Special provisions applicable to the Fishers Island garbage and refuse district.
212. Annual election and notice thereof.
- 212-a. Election of commissioners of Bethpage water district and Hicksville water district.
213. Qualification of voters.
- 213-a. Registration for voters and preparation of the voter register.
- 213-b. Absentee ballots for improvement district elections; special provisions.
214. Oaths, undertakings and compensation of commissioners.
215. Powers and duties of improvement district commissioners.
- 215-a. Postings on website of district.

216. Powers of town board.

§ 210. Application. This article shall apply to any improvement district which shall have adopted a proposition therefor pursuant to subdivision ten of section three hundred forty-one of this chapter.

§ 211. District commissioners. In each such improvement district, there shall be an annual election on the second Tuesday in the month of December of each year. The terms of office of all district commissioners elected or appointed prior to the time this chapter takes effect, shall terminate on the thirty-first day of December, nineteen hundred thirty-three. The first annual election shall be held on the fifth day of December, nineteen hundred thirty-three and at such election the qualified voters of the district shall elect one commissioner for a term of one year, one commissioner for a term of two years and one commissioner for a term of three years. At each annual election thereafter one commissioner shall be elected for a term of three years except as otherwise provided in section two hundred eleven-a of this article. Every resident of the district who is qualified to vote for a town officer, shall be eligible to hold the office of district commissioner.

§ 211-a. Special provisions applicable to the Fishers Island garbage and refuse district. 1. Effective January first, nineteen hundred ninety-nine, the number of district commissioners of the Fishers Island garbage and refuse district shall be increased by two to a total of five commissioners, consisting of the offices of three district commissioners which already exist pursuant to section four of chapter three hundred sixty-eight of the laws of nineteen hundred fifty-three and section two hundred eleven of this article and two additional offices of district commissioners. The original terms of office of the three district commissioners whose offices already exist shall continue until the dates they would otherwise next expire in the absence of this section.

2. At the annual district election in the year nineteen hundred ninety-eight, conducted in the manner prescribed by section two hundred twelve of this article, the three vacancies in the offices of district commissioners which arise by reason of the creation of two additional offices of district commissioners on January first, nineteen hundred ninety-nine pursuant to subdivision one of this section and by reason of the expiration of the term of office of the one district commissioner whose term expires on December thirty-first, nineteen hundred ninety-eight pursuant to section four of chapter three hundred sixty-eight of the laws of nineteen hundred fifty-three (and as provided in such section, pursuant to section two hundred eleven of this article), shall be filled. At such election, the qualified voters of the district shall elect one commissioner for a term of three years, one commissioner for a term of four years and one commissioner for a term of five years.

3. At each annual district election conducted subsequent to the year nineteen hundred ninety-eight, the single vacancy arising each year by reason of the expiration of the term of office of one of the five district commissioners on December thirty-first of that year, shall be filled by the election to such office for a term of five years of a resident of the district who is qualified to vote for a town officer.

§ 212. Annual election and notice thereof. The district commissioners of such improvement district shall publish at the expense of the district the notice of each election of improvement district commissioners held pursuant to this article. Such notice shall be published at least once in one or more newspapers having general circulation in the district and the first publication thereof shall be at least twenty days before the day of such election. The notice of annual election shall specify the time when and the place or places where such election shall be held and the hours during which the polls will be open for the receipt of ballots. Notice of such election shall also be posted on the websites of the district and the town in which the district is located, if such websites are maintained, on the signboard of the town, and conspicuously posted in three or more designated public

locations within the district, on or about the day on which such notice is published. Such election shall be held at a suitable place or places within the district designated by the district commissioners and the polls shall remain open from six o'clock in the evening until nine o'clock in the evening and such additional consecutive hours prior thereto as the district commissioners may determine and specify in the notice of such election. The board of commissioners of such district shall designate for each district election not less than two nor more than four resident taxpayers to act as election inspectors and ballot clerks for each designated polling place. The board of commissioners shall fix the compensation of such election inspectors and ballot clerks in an amount not to exceed ten dollars per hour each for every hour or part thereof of such service and such compensation shall be a charge against the district. The board of commissioners shall cause to be prepared the ballots for all elections, and may authorize the use of voting machines at any annual or special election of the district in accordance with article nine of the election law. After the polls shall have been closed at any election, the election inspectors and ballot clerks at each polling place shall immediately canvass the ballots cast and shall publicly announce the result of the vote at that polling place. Within twenty-four hours the chairman of the board of commissioners, election inspectors and ballot clerks shall execute and file a certificate of the result of the canvass with the board of commissioners of the improvement district and with the clerk of the town in which said district is located.

§ 212-a. Election of commissioners of Bethpage water district and Hicksville water district. Notwithstanding any provision of law to the contrary, the annual election for commissioner of the Bethpage water district and the annual election for commissioner of the Hicksville water district of the towns of Oyster Bay and Hempstead in the county of Nassau shall be conducted by the commissioner or commissioners of such district in the manner prescribed by section two hundred twelve of this article and shall be held on the second Tuesday in the month of December of each year.

§ 213. Qualification of voters. No person shall be entitled to vote for improvement district commissioners unless he or she is a registered voter who shall have resided in the improvement district for a period of thirty days next preceding any election of commissioners.

§ 213-a. Registration for voters and preparation of the voter register. 1. The board of commissioners of any improvement district in which commissioners are elected may provide by resolution that a proposition be submitted at any annual improvement district election providing that additional personal registration of voters not registered with the board of elections shall be permitted for all elections in such improvement district.

2. Registration for all improvement district elections shall be conducted as follows:

(a) Only those persons registered with the board of elections on or before the twenty-third day before such election and those persons whose names are placed on the improvement district register pursuant to the provisions of this section shall be entitled to vote in such district.

(b) In improvement districts in which there is additional personal registration, the board of commissioners shall publish a resolution at least twenty-seven days prior to election day, which shall designate the dates prior to registration day on which the inspectors of election shall meet to commence the preparation of the register; the place in each district where such meetings, registration, if any, and election shall be held; the hours for such meetings, registration, if any, and election; but in no event shall the hours for registration be less than the hours from six o'clock in the evening until nine o'clock in the evening. Such resolution shall be adopted at least thirty days prior to election day.

(c) In an improvement district whose electors have approved additional personal registration, such registration shall be held on the seventeenth day prior to the annual district election, except in those districts which provide by resolution adopted at least thirty-seven days prior to the date of the first election for which it shall be effective,

for an additional day of registration to be held on the nineteenth day prior to the annual district election. Such resolution shall remain in effect for subsequent annual elections, unless amended, modified or repealed.

3. The register for the annual improvement district election shall be prepared in each district by the inspectors of election thereof on the days prior to registration day, if any, designated therefor, on the registration day, if any, at the times and places designated by the resolution of the board of commissioners. In preparing such register, the inspectors of election shall comply with the following procedure:

(a) They shall adopt, use or copy from, the registration list certified and supplied by the county board of elections the names appearing thereon of all persons residing in the improvement district and qualified to vote in such forthcoming annual district election. Such register shall be completed by adding thereto the names of the persons personally appearing before them and providing to their satisfaction to then be or at the time of election qualified to vote.

(b) The register for each district shall include as a minimum the space for the name of the voter, his address within the improvement district and a space for his or her signature to be signed by the voter on election day. Such register shall also contain a space for the signature of the voter to be signed by such voter on registration day. If the register shall contain only space for the name, address and signature of the voter, the improvement district secretary shall furnish a printed certificate to be signed by the voter who appears personally before the inspectors of election on registration day if his name does not already appear on the register. Such certificate shall contain a statement that the person possesses all the necessary qualifications for voting in improvement district elections. Such certificate shall be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject the person signing it to the same penalty as if he had been duly sworn, and such provision shall be printed in bold type directly above the signature line of the certificate holder.

4. The improvement district secretary shall furnish the inspectors of

election, at district expense, with all necessary registration books, papers, equipment and supplies.

5. In lieu of the provisions for designating the election inspectors and ballot clerks, as set forth in section two hundred twelve of this chapter, in improvement districts where additional personal registration is permitted, the board of commissioners shall, by resolution adopted at least forty days prior to the annual district election, designate a resident improvement district elector to act as chairman of any election of said district and shall designate not less than two nor more than four resident district electors to act as election inspectors and ballot clerks in such election. Such resolution shall fix the compensation of the chairman and inspectors and, in addition, the board of commissioners may provide for alternate inspectors who shall assume the office of inspector upon the inability or refusal of an inspector to assume or perform his duties and for any clerical help which they may deem necessary. Such clerical help shall perform their duties under the direction and control of the chairman and inspectors of election.

§ 213-b. Absentee ballots for improvement district elections; special provisions. 1. The board of commissioners of any improvement district in which commissioners are elected, may, by resolution, provide for absentee ballots for the election of the commission, in accordance with the provisions of this section. Such resolution shall take effect at the first such election held more than sixty days after its adoption and shall continue in effect for all such elections until a subsequent resolution providing otherwise shall, in like manner, have taken effect.

2. a. An applicant for such an absentee ballot shall submit an application setting forth (1) his name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that he is or will be, on the day of the election, a qualified voter of the district in which he resides in that he is or will be, on such date, over eighteen years of age, a citizen of the United States and has or will have resided in the district for thirty days next preceding such date; (3) that he is registered in the town; (4) that he will be unable

to appear to vote in person on the day of the election for which the absentee ballot is requested because he is, or will be on such day (a) a patient in a hospital, or unable to appear personally at the polling place on such day because of illness or physical disability or (b) because his duties, occupation or business will require him to be outside of the county or city of his residence on such day, (c) because he will be on vacation outside the county or city of his residence on such day; or, (d) absent from his voting residence because he is detained in jail awaiting action by a grand jury or awaiting trial or is confined in prison after conviction for an offense other than a felony. Such application must be received by the district secretary at least seven days before the election if the ballot is to be mailed to the voter, or the day before the election, if the ballot is to be delivered personally to the voter or his agent.

b. (1) Where such duties, occupation or business are of such a nature as ordinarily to require such absence, a brief description of such duties, occupation or business shall be set forth in such affidavit. (2) Where such duties, occupation or business are not of such a nature as ordinarily to require such absence, such application shall contain a statement of the special circumstances on account of which such absence is required.

c. Where the applicant expects in good faith to be absent on the day of the election because he will be on vacation elsewhere on such day, such application shall also contain the dates upon which he expects to begin and end such vacation, the place or places where he expects to be on such vacation, the name and address of his employer, if any, and if self-employed, a statement to that effect.

d. Where the absence is because of detention or confinement to jail, such affidavit shall state whether the voter is detained awaiting action of the grand jury or is confined after conviction for an offense other than a felony.

e. Where a person is or would be, if he were a qualified voter, entitled to apply for the right to vote by absentee ballot under the

provisions of this section, his spouse, parent or child, if a qualified voter and a resident of the same district, shall be entitled to vote as an absentee voter upon personally making and signing an application in accordance with the preceding provisions of this subdivision and showing that he expects to be absent from the district on the day of the district election by reason of accompanying or being with the spouse, child or parent who is or would be, if he were a qualified voter, so entitled to apply for the right to vote by absentee ballot, and, in the event no application is made by such spouse, child or parent, such further information as the improvement district shall require.

f. Such application shall include the following statement to be signed by the voter.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for absentee ballots, I shall be guilty of a misdemeanor.

Date Signature of Voter

g. An applicant whose ability to appear personally at the polling place of the district of which he is a qualified voter is substantially impaired by reason of permanent illness or physical disability and whose registration record has been marked "permanently disabled" by the board of elections pursuant to the provisions of the election law shall be entitled to receive an absentee ballot pursuant to the provisions of this section without making separate application for such absentee ballot, and the secretary of the improvement district, upon being advised by the board of elections on or with the list of registered voters that the registration record of a voter is marked "permanently disabled", shall send an absentee ballot to such voter at his last known address by first class mail with a request to the postal authorities not to forward same but to return same in five days in the event that it cannot be delivered to the addressee. The board of inspectors of the improvement district shall make an appropriate entry on the registration record indicating the fact that an absentee ballot has been sent and the date of mailing.

3. If, upon examining the application required under the provisions of subdivision two of this section, and upon such inquiry as it deems proper, the board of inspectors of the improvement district shall be satisfied that the applicant is a qualified voter of the district, and entitled to vote by absentee ballot, such board of inspectors shall place his name upon a list, thereupon the applicant shall be issued or mailed an absentee voter's ballot and the secretary of the board of inspectors of the improvement district shall make an appropriate entry on the list indicating that an absentee ballot has been applied for by, and issued to, the applicant.

4. Ballots for absentee voters shall be, as nearly as practicable, in the same form as those to be voted at the district election; if the vote at such election shall be by ballot, the absentee ballot shall conform to that part of the regular ballot which relates to the election of district members; if the vote of such election shall be by voting machine, the absentee ballot shall conform as closely as possible to the manner in which the names of the candidates appear on the voting machines, except that the absentee ballot shall also contain a space for a write-in or write-ins. On the back of such absentee ballots shall be printed the words "Official Ballot, Absentee Voter," followed by the words "For Members of the board of commissioners of Improvement district."

5. a. The board of registration shall enclose each absentee voter's ballot in an envelope which shall be labelled:

ELECTION MATERIAL
PLEASE EXPEDITE

On one side of such envelope shall be printed:

OFFICIAL BALLOT, ABSENTEE VOTER
for
Election of Members
at
Improvement District Election

Name of Voter

Residence (street and number, if any)
City (or Town) of
County of
Improvement district

The date of the election and name of the district shall be printed, and the name of the voter, residence and district shall be written in by the improvement district.

b. On the reverse side of such envelope shall be printed the following statement:

STATEMENT OF ABSENTEE VOTER

I do declare that I will have been a citizen of the United States for thirty days, and will be at least eighteen years of age, on the date of the district election; that I will have been a resident of this state and of the district if any, shown on the reverse side of this envelope for thirty days next preceding the said election and that I am or on such date will be, a registered voter of said district; that I will be unable to appear personally on the day of said district election at the polling place of the said district in which I am or will be a qualified voter because of the reason stated on my application heretofore submitted; that I have not qualified, or do I intend to vote, elsewhere than as set forth on the reverse side of this envelope; that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another to be paid or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this district election, and have not made any promise to influence the giving or withholding of any such votes; that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this district election; and that I have not been convicted of bribery or any infamous crime, or, if so convicted, that I have been pardoned or restored to all the rights of a citizen, without restriction as to the right of suffrage, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law removing my disability to register

and vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of absentee voter, I shall be guilty of a misdemeanor.

Date..... Signature of Voter

c. The envelope shall be gummed, ready for sealing, and shall have printed thereon, on the side opposite the statement, instructions as to the duties of the voter after the marking of the ballot, which instructions shall include a specific direction stating that the envelope must reach the office of the district not later than five P.M. on the day of the election in order that his vote may be canvassed.

d. A person who shall make any material false statement in the statement of absentee voter appearing on the reverse side of the envelope as provided in this subdivision, shall be guilty of a misdemeanor.

6. a. The secretary of the improvement district shall make a list of all persons to whom absentee voter's ballots shall have been issued and keep such list on file in the improvement office where it shall be available for public inspection during regular office hours until the day of the election. Any qualified voter may, upon examination of such list, file a written challenge of the qualifications as a voter of any person whose name appears on such list, stating the reasons for such challenge. Such written challenge shall be transmitted by the secretary to the inspectors of election on election day.

b. Such list shall also be posted in a conspicuous place or places during the election, and any qualified voter may challenge the acceptance of the absentee voter's ballot of any person on such list, by making his challenge and the reasons therefor known to the inspectors of election before the close of the polls.

7. a. The secretary of the improvement district shall be authorized

to call upon the commissioner of police and the officers and members of the police force for such assistance in the enforcement of the provisions of this section as such board shall require, and such commissioner and officers and members of the police force shall be authorized to render such assistance.

b. The board of inspectors of the improvement district may require any person to attend before it at the office of the secretary of the district and be examined as to any matter in relation to which such district is charged with a duty under this section, and may issue a subpoena therefor. Each member of such board of inspectors district shall be authorized to administer any oath that may be required or authorized by law in this connection.

8. No absentee voter's ballot shall be canvassed, unless it shall have been received in the office of the secretary of the district not later than five P.M. on the day of the election.

9. The secretary of the district shall, on the day of the election, transmit all absentee voters' envelopes, received by him in accordance with subdivision eight of this section, to the inspectors of election.

10. If, at the district election, any absentee voters' envelopes shall have been received at the polling place, the inspectors of election immediately after the closing of the polls shall examine them, and shall compare the signature, if any, on each envelope with the signature, if any, on the register, of the person of the same name who registered from the same address. If the signatures are found to correspond, the inspectors shall certify thereto by signing their initials opposite the name of the voter at the appropriate place in the register. If a person whose name is on an envelope as a voter, shall have already voted in person at such district election, or if his name, residence and signature, as stated on the envelope, are not on the register, or if there is no signature on the envelope, this envelope shall be laid aside unopened and be returned unopened to the secretary of the district. If such person is found to be registered and has not so voted in person, and if no objection is made, or if an objection made

be not sustained, the envelope shall be opened and the ballot withdrawn without unfolding and deposited in the proper box or boxes. At the time of the deposit of such ballot, the inspectors shall enter the words "absentee vote" at an appropriate place in the register.

11. During such examination any qualified voter present in the polling place may object to the voting of the ballot contained in any envelope upon the ground or grounds (a) that the person named thereon is not a qualified voter of the district, or (b) that he was within the county or city while the polls of the election were open, except where the applicant is a patient in a hospital located within the county or city or detained or confined in a jail located within the county or city and except where the ballot was obtained upon the ground of inability to appear personally at the polling place on the day of the school district election because of illness or physical disability, or (c) that he was able to appear personally while the polls were open, in cases where the ballot was obtained upon the ground that the voter was a patient in a hospital located within the county or city or detained or confined in a jail located within the county or city or upon the ground of inability to appear personally at the polling place on the day of the election because of illness or physical disability, or (d) that he was not entitled to cast such ballot. An inspector shall make such an objection if he shall know or suspect that the person named on such envelope is not such a qualified voter or was so within the district or was able so to appear personally, or was not entitled to cast such ballot. The election inspectors shall forthwith proceed to determine each objection including any written challenge transmitted to them by the district secretary as provided in subdivision six of this section. Unless the inspectors, by majority vote, shall sustain the objection, the chairman, or if he refuses, another inspector shall endorse upon the envelope the objection and the words "not sustained," shall sign such endorsement, and shall open the envelope and deposit the ballot as provided in this section. Should the inspectors, by majority vote, sustain such objection, the objection and word "sustained" shall be similarly endorsed upon the envelope, the envelope shall not be opened nor the ballots therein canvassed, and such envelope shall be returned unopened to the secretary of the district. If the inspectors of election shall

have received an envelope endorsed with the name of a person who to the knowledge of the inspectors is deceased on the day of the election, the inspectors shall return such envelope unopened to the secretary of the district with the words "deceased--objection sustained" endorsed on the envelope.

12. If the inspectors of election shall have received an envelope, and upon opening the same no ballot shall be found therein, the inspectors shall make a memorandum showing that the ballot is missing. When the casting of absentee voters' ballots shall have been completed, the inspectors shall ascertain the number of such ballots which have been deposited in the ballot box by deducting from the number of envelopes opened the number of missing ballots, and shall make a separate return thereof in duplicate. The number of absentee voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box in order to determine the number of all ballots to be accounted for in the ballot box. Such ballots shall then be counted or canvassed by the inspectors of election along with the other ballots cast at such district election, or, where voting machines are used, shall be added to the votes recorded on such machines.

13. The provisions of this section shall apply to absentee ballots at improvement district elections, notwithstanding any other provision of law. The provisions of any other law as they relate to improvement district elections not inconsistent herewith shall apply to the conduct of such elections.

§ 214. Oaths, undertakings and compensation of commissioners. Each commissioner, before entering upon the duties of his office, shall take the constitutional oath of office and execute to the town and file with the town clerk an official undertaking in such sum and with such sureties as the town board may direct. The town board at any time may require any such commissioners to file a new official undertaking for such sum and with such sureties as the board shall approve. Such commissioners may be paid such an amount as the town board may designate, but not to exceed the sum of one hundred dollars per day each

for each day actually and necessarily spent in the service of the district. Such compensation shall be deemed an expense of maintaining the district.

§ 215. Powers and duties of improvement district commissioners.

Subject to law and the provisions of this chapter, the commissioners of every improvement district shall constitute and be known as the board of commissioners of such improvement district. Such board of commissioners

1. Shall elect one of their members as chairman and another as secretary of the board of commissioners at the first meeting thereof following each annual election of district commissioners, or the board of commissioners may designate the town clerk of such town as secretary of the board of commissioners and when so designated the town clerk shall act as secretary thereof without additional compensation. Every board of commissioners shall file and maintain in the office of the town clerk a complete and accurate record of all proceedings of such board including certified copies of the minutes of each meeting within ten days after each such meeting.

1-a. May, when specifically authorized by the town board and subject to such restrictions as the town board may impose not inconsistent with law, designate one of their members as treasurer and disbursing officer for such district in place of the supervisor, and when a commissioner has been so designated, the supervisor, and the receiver of taxes and assessments or town tax collector shall pay over to the treasurer of the district all taxes, assessments or water rates or rentals assessed, levied or collected for district purposes or services rendered by such district, and all proceeds of obligations issued for district improvements. The proceeds of obligations issued for district improvements shall be deposited, secured and used pursuant to the manner prescribed by section 165.00 of the local finance law. The treasurer shall, within ten days, deposit and secure all other moneys in the manner provided by section ten of the general municipal law. The board of commissioners shall require the treasurer so designated, before entering upon the duties of his office, to give an official undertaking,

conditioned for the faithful performance of his duties and that he will well and truly keep, pay over and account for all moneys and property belonging to the district and coming into his hands as treasurer, in such form, in such sum and with such sureties as the board of commissioners shall direct and approve, and such approval shall be indicated upon such undertaking; and when approved, such undertaking shall be filed in the office of the town clerk. The board of commissioners may determine by resolution that such undertaking shall be executed by a surety company authorized to transact business in the state of New York, and the expense thereof shall be a charge on the district.

1-b. Shall audit all claims against the district and shall order the payment thereof by the district treasurer or the town supervisor, as the case may be, in the amounts allowed. Except as otherwise provided by this subdivision, no such claim shall be audited or ordered paid by the board of commissioners unless an itemized voucher therefor, verified by or on behalf of the claimant, in such form as the board of commissioners shall prescribe, shall have been presented to the board of commissioners for audit and allowance. The board of commissioners may, however, provide by resolution, that any such claim may be presented, audited and paid if it shall have been certified to be true and correct in a statement signed by or on behalf of the claimant upon a form prescribed by the board of commissioners. The provisions of this subdivision shall not be applicable to claims for the payment of fixed salaries of officers or employees, the principal of or interest on obligations issued for purposes of the district, fixed amounts becoming due on lawful contracts for periods exceeding one year, and amounts which the district may be required to pay to the state employees' retirement system on account of contributions for past and current services of officers and employees.

1-c. Notwithstanding the provisions of subdivision one-b of this section, may by resolution establish a petty cash fund for the improvement district treasurer for the payment, in advance of audit, of properly itemized and verified or certified bills for materials, supplies or services furnished to the improvement district for the

conduct of its affairs and upon terms calling for payment to the vendor upon the delivery of any such materials or supplies or the rendering of any such services. The amount of such petty cash fund shall not exceed two hundred fifty dollars. At the time of any payment from such fund, the treasurer shall require delivery to him of a bill in form sufficient for audit by the board of commissioners of such improvement district as required by law. At each meeting of the board of commissioners a list of all expenditures made from such funds since the last meeting of the board, together with the bill supporting such expenditures, shall be presented by the treasurer to the board of commissioners for audit. The board of commissioners of such improvement district shall direct the treasurer to reimburse such petty cash fund from the appropriate budgetary item or items, in an amount equal to the total of such bills which it shall so audit and allow. Any of such bills or any portion of such bills which the board of commissioners shall refuse to audit and allow shall be the personal liability of the treasurer and he shall promptly reimburse such petty cash fund in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to the treasurer after the action of the board of commissioners in disallowing an amount so expended, such amount shall be withheld from such salary payment to the treasurer and, if necessary, subsequent salary payments and paid into such petty cash fund until an amount equal to the amount so disallowed in the audit of the board of commissioners has been repaid to the petty cash fund. Any bond or undertaking filed by the treasurer shall be available to the improvement district for recovery of any losses incurred by reason of the operation of such petty cash funds.

2. Shall cause a map to be prepared showing the exact boundaries of the district and file a certified copy thereof in the office of the town clerk.

3. Shall give notice of annual elections in the manner provided in this article.

4. Subject to the provisions of this article, shall have the management and control of the property of the district and may insure

the same against loss or damage from any risk whatsoever.

5. Subject to the provisions of this article, may acquire by purchase, lease, gift, devise or by condemnation, real property for any of the purposes authorized by law. All real property required for any district purpose, shall be deemed to be required for public use and may be acquired by such district.

6. May sue and be sued as the board of commissioners of the district for the breach of any contract entered into by them, pursuant to this article. Any sum of money recovered by them in such an action shall be paid over to the town treasury and be credited to the improvement district. In the event of the entry of any judgment against such board of commissioners such board shall notify the town board as to the amount of such judgment, interest and costs, and the town board shall forthwith satisfy and pay such judgment, interest and costs, and the amount so paid in satisfaction of any such judgment, interest and costs shall be a charge against such improvement district and as such levied against the taxable property therein, or the amount of any such judgment, including interest and costs may be financed pursuant to the local finance law in which event amounts necessary to provide for the annual payments of principal of and interest on any obligations issued by the town for such purpose shall be a charge against such improvement district and as such levied against the taxable property therein.

8. Shall have the power, with the approval of the majority of the town board, and, if a public hearing thereon is required by paragraph (a) of subdivision twelve of section one hundred ninety-eight of this chapter, after such hearing, and within the limits authorized by such paragraph, to sell or lease any real or personal property owned by, but not required for the purposes of, the district. The receipts from such sale or lease shall be paid to the supervisor of the town and credited to the district and may be expended for any district purpose permitted by law, as the board of commissioners may direct.

9. Shall, on or before the fifteenth day of January, of each and every year, file with the town clerk and post on the website of the district,

provided such website is maintained, a report for the preceding year ending the thirty-first day of December, containing a statement of the following facts:

a. The amount of money on hand at the beginning of the year, and the receipts from all sources during such year.

b. An itemized statement of the amount paid out during such year, and the balance on hand.

c. The outstanding indebtedness of the district, either bonded or otherwise, separately stated.

d. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the district during the next year, after applying thereto the probable amount of income.

e. The improvements and extensions made during such preceding year in the district.

f. Such other facts as the board deems important for the information of the district, together with such recommendations concerning such district as may be deemed proper. Upon receipt of the filing of the report, the town clerk shall cause a copy of the report to be posted on the website of the town, if such website is maintained.

9-a. Shall annually prepare an estimate of proposed expenditures for and revenues of such district for the year beginning with the next succeeding January first. Such estimate shall specify by item all proposed expenditures for general purposes, including expert and professional services, and for debt service. Such estimate may contain for contingent purposes, an amount not to exceed ten per centum of the amount estimated as necessary to meet the expense of maintaining the improvement exclusive of the amount necessary to pay debt service and judgments. The board of commissioners shall conduct a public hearing on such estimate on the first Thursday following the first Tuesday of September, for the calendar year two thousand thirteen on the second

Thursday following the first Tuesday of September or, in Westchester and Monroe counties, the first Thursday following the first Tuesday of October. Notice of such hearing shall be published at least once in the official newspaper of the town wherein such district is located, or if no official newspaper has been designated by the town, in any newspaper having general circulation in the district. The notice may be published in such other newspapers as the board of commissioners may direct. The notice of hearing shall be published not more than twenty nor less than five days prior to the day specified for the hearing. The notice of hearing shall state the time when and the place where the public hearing will be held, the purpose thereof, and that a copy of the estimate of proposed expenditures for and revenues of such district for the year beginning with the succeeding first day of January is available for public inspection at specified times and at a specified public place. After the public hearing, the board of commissioners of an improvement district may change, alter and revise such estimate prior to filing with the budget officer. Notice of such public hearing shall also be posted on the websites of the district and the town in which the district is located, provided such websites are maintained, on the signboard of the town and conspicuously posted in three or more designated public locations within the district, on or about the day on which such notice is published.

10. Shall, after the public hearing conducted as prescribed in subdivision nine-a of this section, annually file with the budget officer at the time specified in sections one hundred four and two hundred two-a of this chapter and post on the website of the district, if such website is maintained, the estimate of proposed expenditures for and revenues of such district for the year beginning with the succeeding first day of January. Upon receipt of the filing of the estimate, the budget officer shall cause a copy of such estimate to be posted on the website of the town, if such website is maintained. In any town, the town board may reduce any item specified in such estimate, but may not reduce any item relating to estimated revenues and debt service unless the majority of the commissioners of an improvement district request such reduction in writing.

11. May award contracts in the same manner and upon the same notice as provided for the award of contracts by the town board in article twelve, provided, however, that the board of commissioners shall not incur any indebtedness or contract any obligation in excess of the amount provided for in the annual estimate and for which a tax or assessment has been previously levied upon the district, except pursuant to petition as hereinafter provided or except from funds made available pursuant to the local finance law.

12. Shall adopt a resolution prescribing how water connections shall be made and shall make and establish from time to time, water rates to be paid by consumers and may provide for the payment of such water charges in advance. The board of commissioners may provide that a discount shall be allowed for the prompt payment of water rates within the time required by such board for the payment thereof. Such water charges shall be a lien upon the real property upon which or in connection with which said water was used. The board of commissioners may provide that unpaid water rates which are in arrears for thirty days or longer shall be subject to a penalty not exceeding ten per centum of the amount due and may further provide for cutting off the supply of water if such water charges are not paid within sixty days from the date due, in a water district. At the same time as the filing of the estimates specified in section one hundred four of this chapter, or in case the town board shall elect by resolution a subsequent date, which in no event shall be later than November first in any year, the water commissioners shall annually file with the town board, and with the supervisors of adjoining towns in which permits have been issued to property owners, statements showing the unpaid water charges in the respective districts and towns and which have not appeared on any such statements previously filed.

13. Shall adopt a resolution or ordinance prescribing how sewer connections shall be made, in a sewer district.

14. Shall adopt a resolution or ordinance prescribing how storm sewer connections shall be made, in a drainage district.

15. Shall have all the powers provided in section two hundred one of this chapter to require the installation of sewer connections, in a sewer or drainage district and water connections, in a water district. All notices therein required shall be given by the board of commissioners and the cost or expense of the improvement shall be certified to the town board and assessed by it.

16. Shall have all the powers of the town board, pursuant to subdivision four of section one hundred ninety-eight, in a park district.

17. Shall have all the powers of the town board, pursuant to subdivision seven of section one hundred ninety-eight, in a refuse and garbage district.

18. Shall have all the powers of the town board, pursuant to subdivision eight of section one hundred ninety-eight, in a public dock district.

19. Except as otherwise provided by this article, shall have and exercise any power conferred upon the town board of the town in such a district, pursuant to provisions of article twelve and of sections two hundred thirty-seven, two hundred thirty-eight and two hundred thirty-nine of article fifteen, when delegated to it by the town board.

20. May provide by resolution that candidates for district offices shall file their names with the secretary of the board of commissioners at least thirty days prior to the date of the district elections, and, in addition, require that such nominations be submitted in petition form subscribed by twenty-five registered voters of the district. Thereafter, the ballots for the election of district officers shall specify the names of the candidates duly filed and, in addition, provide proper blank spaces for each office to be filled at such election. If any such resolution shall be adopted, the requirements thereof shall be specified in the notice of each district election held thereafter. The board of commissioners may rescind such resolution at any time and thereafter district officers shall be elected as otherwise provided herein.

21. Whenever a vacancy shall occur or exist in any elective district office, the town board of the town in which such district is located shall appoint a qualified person to fill the vacancy and the person so appointed shall hold office until the thirty-first day of December next succeeding the first annual district election held at least sixty days after such vacancy shall occur or exist, provided, however, that if a vacancy so occurs or exists in any elective district office, the term of which would expire on the thirty-first day of December next succeeding, the person so appointed shall hold office only until such thirty-first day of December; and at the first annual district election held at least sixty days after such vacancy shall occur and exist, a successor shall be elected for the unexpired portion of the term beginning on the first day of January next succeeding. Whenever a vacancy shall occur or exist in any other district office, the board of commissioners of such district may appoint a qualified person to fill the vacancy who shall hold office for the remainder of the unexpired term.

22. May regularly employ an attorney or an engineer for professional services and advice, or may employ from time to time and whenever necessary an attorney or engineer or counsel or expert engineering service in relation to a specific subject matter, improvement, proceedings or litigation, provided however, that no such attorney, engineer, counsel or engineering service shall be employed unless and until the town board of the town in which such district is located shall adopt a resolution authorizing such employment. With the consent of the town board, the town attorney or the town engineer may perform professional services for the district and receive such compensation therefor as may be agreed upon between the commissioners and such town attorney or town engineer.

23. May purchase uniforms and protective apparel for employees of the district.

§ 215-a. Postings on website of district. In addition to any public notice or publication requirements of any other general, special or

local law, all public notices of the district, including, but not limited to, notices of public meetings and hearings, whether pursuant to this chapter or any other general, special or local law, shall be posted in a timely manner on the websites of the district and the town in which the district is located, if such websites are maintained. Copies of any reports of examination of the district performed by the state comptroller and reports of any external audit of district operations or any management letter prepared in conjunction with such external audit report, annual financial reports made pursuant to section thirty of the general municipal law, when a separate report on district finances is prepared pursuant to such section, and any other annual reports on district finances shall be posted in a timely manner on the websites of the district and the town in which the district is located, if such websites are maintained.

§ 216. Powers of town board. Every petition for any purpose required by article twelve of this chapter to be initiated by petition shall be presented to the town board but no such petition for any such purpose within a district to which this article shall apply, shall be acted upon by the town board unless such petition and the purposes thereof shall have been approved in writing by a majority of the commissioners of such district. The town board shall call a hearing upon all petitions so approved by the commissioners and give notice thereof and such hearing shall be held in the manner provided in article twelve of this chapter. The town board shall call a hearing upon other purposes authorized by article twelve of this chapter to be undertaken without petition, only after such purposes shall have been approved in writing by a majority of the commissioners of such district, and the town board shall give notice thereof and such hearing shall be held in the manner provided in article twelve of this chapter. If the town board shall determine to grant the petition or to authorize any such purpose, it may delegate to the board of commissioners the conduct of all further proceedings thereon pursuant to article twelve. Nothing herein contained shall be construed to delegate or transfer any power of the town board not contained in article twelve or in sections two hundred thirty-seven, two hundred thirty-eight and two hundred thirty-nine of article fifteen of this

chapter.

ARTICLE 14

GENERAL IMPROVEMENTS

Section 220. General town improvements.

221. Solid waste management facilities.

222. Town buildings.

223. Expense of improvment.

§ 220. General town improvements. Upon the adoption of a resolution therefor, subject to a permissive referendum, the town board may:

1. Erect a monument or monuments within the town in commemoration of any person or event.

2. Purchase, lease, construct, alter or remodel a town hall, a town lockup or any other necessary building for town purposes, acquire necessary lands therefor, and equip and furnish such buildings for such purposes, or to demolish or remove any town building.

3. Establish airports, landing fields, public parking places, public parks or playgrounds, acquire the necessary lands therefor, and equip the same with suitable buildings, structures and apparatus.

4. Establish one or more public dumps or dumping grounds within or without such town, and acquire the necessary land therefor. No such land shall be acquired within the corporate limits of any city, village or other town for such purchase without the consent of the governing body of the city, village or town in which such land is situated.

Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not

authorized pursuant to this section. Any expenditure financed in whole from moneys appropriated from surplus funds shall not be subject to referendum.

§ 221. Solid waste management facilities. 1. Upon the adoption of a resolution therefor, subject to a permissive referendum, in a town of the first class, or, upon the adoption of a proposition therefor at a town election, in a town of the second class, the town board may provide for the collection, separation, treatment, processing and disposal of solid waste, as defined in section 27-0701 of the environmental conservation law, and for that purpose may construct, operate and maintain solid waste management facilities, as defined in section 27-0701 of the environmental conservation law, acquire the necessary lands therefor, and purchase, operate and maintain all necessary appliances appurtenant thereto, including such vehicles as may be required for such collection, separation, treatment, processing and disposition. Such town board may also employ such employees as may be necessary for the maintenance and operation of such facility or facilities or appurtenant equipment and fix their compensation.

2. In a town which acquires such a facility or facilities, the town board may contract with any municipality or special district for the collection, separation, treatment, processing or disposal, by the town of the solid waste from any other municipality or special district. The town board may also contract with any corporation, partnership or individual for the disposal by the town of solid waste accumulated or collected by such corporation, partnership or individual. The contract price therefor shall be such sum as shall be fixed by the town board and the term of such a contract shall be for a period not longer than five years for a contract involving collection and disposal by means other than resource recovery, and not longer than twenty-five years for a contract involving collection and disposal through resource recovery, in either case subject to renewal from time to time upon such terms as the town board may determine.

3. Any expenditure approved pursuant to this section shall be paid for

by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section.

§ 222. Town buildings. Whenever the town board, pursuant to the provisions of this chapter, shall determine to erect, construct, alter or remodel any building, said town board shall cause detailed plans, specifications and estimates for such building or buildings to be prepared. After such detailed plans, specifications and estimates shall have been finally adopted and approved, said board shall award contracts for the performance of the work to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law.

§ 223. Expense of improvement. The expense of any public improvement made under authority of this article, shall include the amount of all contracts, the costs of all lands and interests therein necessarily acquired, printing, publishing, interest on loans, legal and engineering services and all other expenses incurred or occasioned by reason of the improvement or project. In no event shall any contract be awarded or obligation incurred in excess of the amount specified in the resolution of the town board or in the proposition adopted at the town election.

ARTICLE 15

FINANCING OF PUBLIC IMPROVEMENTS

Section 231. Permanent financing of district and special improvements.

231-a. Permanent financing of district improvements to be paid from general taxation.

232. Permanent financing of general improvements.

234. Disposition of proceeds of bonds, notes or certificates.

235. Accounts to be kept with each improvement.

236. Completion of improvements.

- 237. Preparation of assessment-roll for certain improvements.
- 238. Assessment of property partly in district.
- 239. Completion of roll and hearing.
- 240. Delivery of roll to collector; warrant for collection.
- 241. Notice by collector or receiver of taxes; return of assessment roll.
- 242. Assessments payable in installments.
- 243. Collection of annual installments of assessments.
- 244. Correction of assessments.
- 244-a. Apportionment of completed local assessment upon subdivision or sale of part of land affected.
- 245. Expense of maintenance.
- 246. Proceeding to review decision.
- 247. Reassessment and apportionment where original assessment and apportionment has been held invalid.

§ 231. Permanent financing of district and special improvements. 1.

When the cost of any improvement is to be borne by special assessment to be assessed and paid as provided in this subdivision, such improvement shall be temporarily financed pursuant to the local finance law until after the confirmation of the assessment. When such assessments shall have been confirmed, a period of thirty days shall be given from the date of confirmation in which such assessments may be paid in whole or in part, provided a part payment so made shall equal ten per centum, or a multiple thereof, of the amount payable and the obligation or appropriate portion thereof cancelled. Upon the expiration of such period, obligations shall be issued pursuant to the local finance law for the total cost thereof, deducting the amounts of the assessments or parts thereof so paid within such period.

Upon ascertainment of the amount of the cost to be assessed by special assessment the town board shall prescribe that such assessments may be so paid at the option of the payer in whole or in part, without penalty or interest, and the unpaid amounts, if any, to be paid in annual installments, with interest thereon.

If bond anticipation notes are issued, all collections from assessments so paid in whole or in part shall be applied at once in reduction of such notes.

Annual collections of assessments payable in installments shall be applied in payment of maturing obligations and accruing interest. If the total amount of assessments payable in installments collected in any year shall be less than the amount required to pay maturing bonds and accruing interest, the town board may direct that surplus moneys, not otherwise appropriated, be applied.

Any surplus accruing from the sale of obligations, whether from premiums or otherwise, shall be applied to the reduction of the debt so incurred.

2. Notwithstanding any other provisions of this chapter, the town board, upon the completion of the improvement or at any time prior thereto, may determine to issue, pursuant to the local finance law, the obligations of said town in such an amount as said board may estimate to be sufficient to pay the entire cost of the improvement, but not in excess of the maximum amount proposed to be expended for the improvement as stated in the petition, or in the final order, if the town board proceeded under article twelve-A of this chapter, or, if such improvement be an improvement constructed pursuant to section two hundred two-b of this chapter, not in excess of the estimated expense thereof as stated in the notice of hearing. There shall be annually apportioned and assessed upon the several lots and parcels of land especially benefited by the improvement in proportion to the amount of benefit which the improvement shall confer upon the same, and in the manner provided in section two hundred two-a of the town law for the assessment of the cost of maintenance in a sewer district, an amount sufficient to pay the principal and interest of any obligations issued for such improvement as the same shall become due and to pay the cost of maintenance for the fiscal year commencing on the first day of January next succeeding. In the event that the annual collection of such assessments shall be less than the amount required to pay the principal and interest of such obligations as they shall become due, the town

board shall direct that surplus moneys not otherwise appropriated be applied.

Whenever an unpaid assessment has been divided into annual installments pursuant to this section the town board may, at the time of making such division, or at any time thereafter, provide that all future annual installments may be prepaid together with a sum sufficient to meet all future pro rata shares of the annual interest payable on such obligations and which would otherwise have been added to such future installments had same not been prepaid. All sums received from such prepayments shall be deposited and retained in a separate account in a depository designated in the manner provided by section ten of the general municipal law to be applied only to the payment of the obligations issued pursuant to this section. Notwithstanding the foregoing, such sums so received may be invested in the manner permitted in section eleven of the general municipal law.

§ 231-a. Permanent financing of district improvements to be paid from general taxation. When the cost of any improvement is to be assessed, levied and collected from the several lots and parcels of lands within a district in the same manner and at the same time as other town charges, the town board may finance said improvement pursuant to the local finance law. The town board shall raise annually by tax a sum sufficient to pay the interest and the principal of obligations issued to finance such improvement, if not otherwise paid, as the same shall become due; such tax shall be assessed, levied and collected from the several lots and parcels of land within the district in the same manner and at the same time as the annual tax for other town charges.

Annual collections of such taxes shall be applied by the supervisor in payment of maturing obligations and accruing interest, for which such taxes were levied. If the total of annual collections of such taxes shall be less than the amount required for such purposes, the town board may direct that surplus moneys not otherwise appropriated be applied.

§ 232. Permanent financing of general improvements. The town board may provide for the payment of the cost of any public improvement or project authorized by subdivisions eleven-a or eleven-c of section sixty-four, or sections eighty-one, two hundred twenty or two hundred twenty-one of this chapter, by any one or by a combination of the following methods, namely: (1) by the use of surplus moneys of the town or (2) by including a sum therefor in the annual tax levy or (3) by making funds available therefor pursuant to the local finance law. The town board shall raise annually by tax a sum sufficient to pay the interest and the principal of such obligations, if not otherwise paid, as the same shall become due; and such tax shall be assessed, levied and collected from all taxable property in the town in the same manner and at the same time as the annual tax for other town charges.

If the public improvement or project is a refuse disposal plant or plants referred to in section two hundred twenty-one of this chapter provision shall be made that the town shall be reimbursed, out of revenues from the improvement or project to pay the cost of which obligations were issued, for any moneys so raised by taxation for the payment of the principal and interest of such obligations.

§ 234. Disposition of proceeds of bonds, notes or certificates. All moneys derived from the sale of bonds or notes shall be kept as a separate fund by the supervisor. Such moneys shall be disbursed only in the manner provided by section one hundred nineteen of this chapter.

§ 235. Accounts to be kept with each improvement. The supervisor shall keep accounts in the name of each improvement in such form as has been or may be formulated and prescribed by the state department of audit and control. He shall carefully preserve all coupons, certificates, bonds and notes which he shall pay, and present the same, with a transcript of the account, to the town board from time to time, as it may require, and at least once in each year shall make and file a complete statement and shall account with such board on account of every improvement.

§ 236. Completion of improvements. Upon the completion of any of the improvements authorized by article twelve, article twelve-A, or section eighty-one, two hundred twenty or two hundred twenty-one of this chapter, the town board, engineer, or other official or employee in charge thereof, shall file in the office of the town clerk a statement in detail showing the actual and complete cost thereof. Such statement shall thereupon be entered in full in the minutes of the town board and if the cost of the improvement shall be borne by local assessment upon the several lots or parcels of land especially benefited, pursuant to article twelve, the town clerk shall file a certified copy thereof with the assessors, accompanied by a certified copy of the resolution of the town board specifying the property especially benefited by the improvement and directing the assessors to apportion so much of the cost thereof upon the several lots and parcels of land so deemed benefited as shall be in just proportion to the amount of benefit which the improvement shall have conferred upon the same.

§ 237. Preparation of assessment-roll for certain improvements. It shall thereupon be the duty of the assessors, or the town board, if the town board shall so elect, to prepare an assessment-roll which shall contain a description of each lot or parcel of land so that the same may be ascertained and identified; the names of the reputed owners thereof; the amount of benefit of said improvement which each such lot or parcel of land shall have received, and the amount assessed against each lot or parcel. In case of assessments for general or trunk sewers, drains and trunk water mains, all property within the sewer, drainage or water districts shall be included in the assessment. In other cases the town board shall define the territory to be included by the assessors in the assessment-roll. The town board may at its election prepare any assessment-roll in the first instance without at any time submitting the same to the assessors.

§ 238. Assessment of property partly in district. In all cases where real property is divided by the boundary line of any district, it shall

be the duty of the assessors after fixing the valuation of the whole of such real property as now required by law, to determine what proportion of such valuation is on account of that part of such real property lying within the limits of the district and shall designate the same upon the assessment-roll. The valuation of the real property lying within such district so fixed and determined by the assessors shall be the valuation of said part of such real property for taxation for all district purposes.

§ 239. Completion of roll and hearing. The assessors or the town board, as the case may be, shall file the assessment-roll when completed, with the town clerk and thereupon it shall be the duty of the town board to cause notice to be published at least once in a newspaper published within the town, or, if there be none published in the town, then in a newspaper published in the county and having a circulation within the town, that said assessment-roll has been completed, and that at a time and place to be specified therein the town board will meet and hear and consider any objections which may be made to the roll. The first publication of the notice of the completion of the roll shall be not less than ten nor more than twenty days before the time to be specified therein for the hearing.

At the time and place so specified, the town board shall meet and hear and consider any objections to the assessment-roll, and may change or amend the same as they deem it necessary or just so to do and may affirm and adopt the same as originally proposed or as amended or changed, or they may annul the same and order the assessors to proceed anew and to prepare another roll or the town board may prepare such new roll. If a new roll be prepared, upon the completion and filing thereof the town board shall give notice of a public hearing thereon, hold such hearing and consider objections and reject, correct, amend and affirm the new roll in the manner herein provided with respect to the original roll. No action or proceeding shall be maintained to set aside, vacate, cancel, annul, review, reduce or otherwise test or affect the legality or validity of any such assessment unless such action or proceeding shall be commenced within thirty days after the said final assessment-roll

shall have been affirmed.

§ 240. Delivery of roll to collector; warrant for collection. 1. When the assessment roll shall have been finally approved and adopted by the town board, the board shall annex thereto a warrant which shall be signed by the supervisor and countersigned by the town clerk commanding the town tax collector or the receiver of taxes and assessments to collect from the several persons named therein the sum or sums opposite their respective names and to pay the same to the supervisor of the town.

2. Notwithstanding the provisions of subdivision one of this section, when the assessment roll is prepared by means of electronic data processing equipment, the warrant may be filed therewith, in accordance with the provisions of article fifteen-C of the real property tax law.

3. The warrant so annexed to or filed with the assessment roll shall prescribe that the assessments therein may be paid in whole or in part without fee or penalty on or before a date to be specified therein which shall be not less than thirty nor more than one hundred eighty days from the date of the warrant.

§ 241. Notice by collector or receiver of taxes; return of assessment roll. Each town tax collector or receiver of taxes and assessments, upon receiving an assessment roll and warrant, shall forthwith cause notice of the reception thereof to be published at least once in the official paper and to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter, specifying the place where and the time when the assessments may be paid to him. Within ten days after the last day specified in the warrant for the payment of the assessments in whole or in part, the town tax collector or receiver of taxes and assessments shall deliver the assessment roll or, upon mutual agreement, the data file therefor, as provided in article fifteen-C of the real property tax law, to the supervisor of the town, indicating the several parcels of land for which assessments shall have

been paid in full, or in part, and the parcels of land for which no part of such assessments shall have been paid, and he shall at the same time account for and pay over to the supervisor all moneys so collected.

§ 242. Assessments payable in installments. 1. The supervisor shall present the returned assessment roll to the town board at its next meeting. If obligations shall have been issued to finance the improvement, in whole or in part, the town board shall divide the amount of the unpaid assessment against each parcel of land into such annual installments as shall be necessary to completely amortize the principal amount of such obligations as they shall mature. A special assessment roll shall be prepared setting forth such amortization, specifying the owner of each parcel of land and the amount of each annual installment which shall be assessed against such parcel.

2. There shall be added to the amount of each installment, interest at the highest rate borne by the obligations so issued. The original assessment roll or data file as authorized by article fifteen-C of the real property tax law returned by the collector or receiver of taxes, together with the special assessment roll for the payment of the assessments in installments, shall be filed in the office of the town clerk.

3. Whenever assessments shall be payable in installments, each installment thereof shall become a lien at and only from the time the same becomes payable upon the parcel of real estate upon which the same shall be assessed, prior and superior to all other claims, liens, assets or interests therein, except the lien of an existing tax or assessment.

§ 243. Collection of annual installments of assessments. The supervisor of the town shall annually transmit to the county legislative body at the meeting thereof at which taxes are levied a statement setting forth a description of each parcel of land liable for the payment of an installment of an assessment together with the name of the owner and the amount of such assessment with interest. It shall be the

duty of the county legislative body to levy and assess the amount of such installment, with interest as aforesaid, against the specific lot or parcel of land against which same was originally levied and assessed at the time and in the manner provided by law for the levy of state and county taxes. The warrant annexed to or filed with the tax roll and delivered to the town tax collector or receiver of taxes and assessments shall direct him to pay to the supervisor the full amount of such installments of unpaid assessments with interest. If the collector or receiver of taxes and assessments shall be unable to collect such installment of assessment with interest, he shall return the same to the county treasurer of the county and collection thereof shall be enforced in the manner provided by law for the collection of unpaid town taxes.

§ 244. Correction of assessments. When it shall be ascertained to the satisfaction of the said board that any error, omission or mistake has been made in measuring or in entering the frontage or bounds of any lot or in the quantity of any parcel of land held to be especially benefited by an improvement or in any other matter connected with the making of a local assessment, it shall be lawful for the said board, and it is hereby authorized to correct such error, omission or mistake. Before making any such correction, however, it shall give to the owner or occupant of the land against which an assessment is to be made or increased, notice personally, or by mail, specifying a time, which shall be at least five days after the mailing or service of the notice, and a place at which the said board will meet for the purpose of correcting such alleged error, omission, or mistake, and shall give to such person at such time and place an opportunity to be heard, and to make such objections to such change as he may desire. If the correction of such error, omission or mistake shall affect the entire assessment, or shall be sufficiently general so that the board shall believe that in furtherance of justice it should give public notice thereof, it shall at least ten days before correcting such error, omission or mistake, publish in the official paper a notice specifying the alleged error, omission or mistake, and that at a time and place to be specified therein it will meet for the purpose of correcting the same, and of hearing any objections which may be made thereto. The board shall meet

at the time and place to be so specified, and after hearing all objections which may be made thereto, if, in its judgment, the mistake, error or omission exists, and in furtherance of justice it should be corrected, it shall cause the same to be so corrected.

§ 244-a. Apportionment of completed local assessment upon subdivision or sale of part of land affected. 1. At any time after the approval and adoption of an assessment-roll for a district or special improvement, whether pursuant to this chapter or any other statute of general application, under which an assessment is payable in installments which become liens against the property upon which assessed at and only from the time they become payable, the owner of the whole or any divided portion of a parcel of land against which as a single parcel such an assessment shall have been made and any installment or installments of which remain unpaid and shall not have become payable may, in case a subdivision map of such parcel shall have been filed or in case a portion thereof shall have been transferred or conveyed, make application to the town board upon a duly acknowledged petition for an apportionment of such unpaid assessment, to the extent that any installment or installments thereof shall not have become payable, upon the lots or other portions of such parcel as so divided; provided, however, that such a petition must be presented to the town board not later than the first day of July in any year.

2. Such petition shall describe the assessment sought to be apportioned and the parcel of land against which it shall have been made, and shall give the names and addresses of all the reputed owners of the whole or any divided portion or portions of such parcel. If a subdivision map thereof shall have been filed, a copy of such map shall accompany the petition, and if no such map shall have been filed a description of the separate portions into which such parcel is divided shall be contained in the petition.

3. The town board shall act upon such petition within thirty days after the receipt thereof and if it shall determine to grant the relief asked shall make or cause to be made by the assessors a separate written

apportionment of such unpaid assesment, to the extent that any installment or installments thereof shall not have become payable, in the same manner and upon the same basis as required for the preparation of the assessment-roll, in accordance with section two hundred thirty-seven, and shall file or cause the same to be filed with the town clerk. The town board shall thereupon cause a notice stating that such apportionment has been completed and that at a time and place to be specified therein it will hear and consider any objection which may be made thereto to be given personally or by mail to each reputed owner of any portion of such parcel, and also to be posted in one or more conspicuous places upon each portion of such parcel reputed to be separately owned. Such notice of hearing shall be given in such manner not less than ten nor more than twenty days before the time specified therein for the hearing. Thereafter, the town board shall proceed and the parties concerned shall be governed in the same manner, so far as practicable, as provided in section two hundred thirty-nine, with respect to the original assessment-roll. When such apportionment shall have been finally approved and adopted by the town board, it shall change and correct the assessment-roll of the improvement to conform to such apportionment; and collection of such apportioned assessment shall be made in like manner as provided for the original assessment.

4. An assessment apportioned against a separate part of a parcel of land originally assessed, as provided in this section, may in like manner be itself similarly apportioned under appropriate circumstances requiring such apportionment.

§ 245. Expense of maintenance. After the improvement is constructed and completed, it shall be maintained by the town board and the cost of such maintenance shall be a charge upon the district or parcels of land against which the cost of the improvement was charged and shall be raised in the manner provided in section two hundred two-a of this chapter.

§ 246. Proceeding to review decision. Any person interested who shall

have appeared before the board and made his objections at any hearing provided for in this statute, and who shall consider himself aggrieved by any decision or action of the board may commence a proceeding, within thirty days from the date of such decision or action, in the county or supreme court for a review of the decision or action of the board, in the manner provided by article seventy-eight of the civil practice law and rules. The court may review the action of the board, and if it decides that any injustice or error has been committed, may annul the proceedings and direct the board to proceed in the matter de novo, or may specify the correction which should be made and compel such correction by the board; and the court may, in its discretion, stay the proceedings of the board upon motion of the petitioner, and upon such security or conditions and notice to the board as may seem proper until the final decision on the petition.

§ 247. Reassessment and apportionment where original assessment and apportionment has been held invalid. In the event that any tax or assessment apportionment assessed or levied upon any property in any town on account of or in behalf of any district or for the construction of any improvement authorized by this chapter, for the payment of the principal or interest of any town bond issued on behalf of any such district or improvement, shall be held invalid or illegal because of the invalidity of, or any irregularity in, the proceedings for the establishment or enlargement of such district, or for the acquisition, construction, enlargement or extension of any improvement therein or for the construction of any improvement authorized by this chapter, the town board shall make a new apportionment, assessment or levy of the amount to be raised for the payment of the principal and interest of such bonds in the manner provided by law for the original apportionment, assessment or levy, or if such new apportionment, assessment or levy cannot be legally made, shall assess such amount on the lands within the district or abutting upon such improvement in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom in the manner provided by this chapter for the assessment of the cost of the construction of a sewer system, and such board may, after a hearing held thereon, determine to assess such amount on all such lands or on the

lands benefited, in proportion to the assessed valuation of such lands. After such amount has been so apportioned or assessed, the town board shall transmit a statement showing each lot or parcel liable and the amount chargeable to each to the board of supervisors. The board of supervisors shall levy the respective amount against the property liable and shall cause to be prepared forthwith a special or supplemental tax-roll and shall cause said amounts to be collected in the same manner as other town taxes. Said amounts when collected shall be paid to the supervisor and be by him applied in payment of the bonds. Nothing herein contained shall in any way limit or affect the power to pay the principal and interest of such bonds in the same manner as other town charges are paid.

ARTICLE 16

ZONING AND PLANNING

Section 261. Grant of power; appropriations for certain expenses incurred under this article.

261-a. Transfer of development rights; definitions; conditions; procedures.

261-b. Incentive zoning; definitions, purpose, conditions, procedures.

261-c. Planned unit development zoning districts.

262. Districts.

262-a. Town of Lansing; division of certain parts thereof.

263. Purposes in view.

264. Adoption of zoning regulations.

265. Changes.

265-a. Exemption of lots shown on approved subdivision plats.

266. Adoption of first zoning ordinance.

267. Zoning board of appeals.

267-a. Board of appeals procedure.

267-b. Permitted action by board of appeals.

267-c. Article seventy-eight proceeding.

268. Enforcement and remedies.

269. Conflict with other laws.

270. Official map, establishment.

- 271. Planning board, creation, appointment.
- 272-a. Town comprehensive plan.
- 273. Official map, changes.
- 274-a. Site plan review.
- 274-b. Approval of special use permits.
- 276. Subdivision review; approval of plats; development of filed plats.
- 277. Subdivision review; approval of plats; additional requisites.
- 278. Subdivision review; approval of cluster development.
- 279. Subdivision review; record of plats.
- 280. Permits for buildings in bed of mapped streets.
- 280-a. Permits for buildings not on improved mapped streets.
- 281. Municipal improvements in streets.
- 282. Court review.
- 283. Issuance of licenses and permits in certain towns.
- 283-a. Coordination with agricultural districts program.
- 284. Intermunicipal cooperation in comprehensive planning and land use regulation.
- 285. Separability clause.

§ 261. Grant of power; appropriations for certain expenses incurred under this article. For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city; provided further, that all charges and expenses incurred under this article for zoning and planning shall be a charge upon the taxable property of that part of the town outside of any incorporated village or city. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such charges

and expenses, provided however, that such appropriation shall be the estimated charges and expenses less fees, if any, collected, and provided, that the amount so appropriated shall be assessed, levied and collected from the property outside of any incorporated village or city. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

§ 261-a. Transfer of development rights; definitions; conditions; procedures. 1. As used in this section:

a. "Development rights" shall mean the rights permitted to a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

b. "Receiving district" shall mean one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

c. "Sending district" shall mean one or more designated districts or areas of land in which development rights are designated for use in one or more receiving districts.

d. "Transfer of development rights" shall mean the process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts.

2. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for transfer of

development rights pursuant to other enabling law, a town board is hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as the town board deems necessary and appropriate that are consistent with the purposes of this section. The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value, to protect lands at risk from sea level rise, storm surge or flooding and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The conditions hereinabove referred to are as follows:

a. That transfer of development rights, and the sending and receiving districts, shall be established in accordance with a comprehensive plan within the meaning of section two hundred sixty-three of this article. The sending district from which transfer of development rights may be authorized shall consist of natural, scenic, recreational, agricultural, forest, or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected or lands at risk from sea level rise, storm surge or flooding. Every receiving district to which transfer of development rights may be authorized, shall have been found by the town board, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the town and by the federal, state, and county agencies having jurisdiction to approve permissible development within the district. A generic environmental impact statement pursuant to the provisions of article eight of the environmental conservation law shall be prepared by the town board for the receiving district before any such district, or any sending district, is designated, and such statement shall be amended from time to time by the town board if there are material changes in

circumstances. Where a transfer of development rights affects districts in two or more school, special assessment or tax districts, it may not unreasonably transfer the tax burden between the taxpayers of such districts. The receiving and sending districts need not be coterminous with zoning districts.

b. That sending and receiving districts be designated and mapped with specificity and the procedure for transfer of development rights be specified. Notwithstanding any other provision of law to the contrary, environmental quality review pursuant to article eight of the environmental conservation law for any action in a receiving district that utilizes development rights shall only require information specific to the project and site where the action will occur and shall be limited to review of the environmental impacts of the action, if any, not adequately reviewed in the generic environmental impact statement.

c. That the burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, as defined in title three of article forty-nine of the environmental conservation law, which burden upon such land shall be enforceable by the appropriate town in addition to any other person or entity granted enforcement rights by the terms of the instrument. All provisions of law applicable to such conservation easements pursuant to such title shall apply with respect to conservation easements hereunder, except that the town board may adopt standards pertaining to the duration of such easements that are more stringent than such standards promulgated by the department of environmental conservation pursuant to such title. Upon the designation of any sending district, the town board shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. No such modification or extinguishment of an easement shall diminish or impair development rights within any receiving district. Any development right which has been transferred by conservation easement shall be evidenced by a certificate of development right which shall be issued by the town to the transferee in a form suitable for recording in the registry of deeds for the county where the receiving district is situated in the

manner of other conveyances of interests in land affecting its title.

d. That within one year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.

e. That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a town may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the town. Towns shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the town shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal development rights program.

f. That prior to designation of sending or receiving districts, the legislative body of the town shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate income housing caused by the transfer of development rights.

3. The town board adopting or amending procedures for transfer of development rights pursuant to this section shall follow the procedure for adopting and amending its zoning ordinance or local law, as the case may be, including all provisions for notice applicable for changes or amendments to a zoning ordinance or local law.

Nothing in this section shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any local legislative body.

§ 261-b. Incentive zoning; definitions, purpose, conditions, procedures. 1. Definitions. As used in this section:

(a) "Incentives or bonuses" shall mean adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance or local law for a specific purpose authorized by the town board.

(b) "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the town board.

(c) "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted, pursuant to this section, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other enabling law, a town board is hereby empowered, as part of a zoning ordinance or local law adopted pursuant to this article, or by local law or ordinance adopted pursuant to other enabling law, to provide for a system of zoning incentives, or bonuses, as the town board deems necessary and appropriate consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive, or bonus, zoning shall be to advance the town's specific physical, cultural and social policies in accordance with the town's comprehensive plan and in coordination with other community planning mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a comprehensive plan within the meaning of section two hundred sixty-three of this article.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.

(a) The town board shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning ordinance or local law. In providing for such system the board shall follow the procedure for adopting and amending its zoning ordinance or local law, including all provisions for notice and public hearing applicable for changes or amendments to a zoning ordinance or local law.

(b) Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the town zoning ordinance or local law and shall be incorporated in any map adopted in connection with such zoning ordinance or local law or amendment thereto.

(c) Each zoning district in which incentives or bonuses may be authorized shall have been found by the town board, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the town board shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

(d) A generic environmental impact statement pursuant to article eight of the environmental conservation law and regulations adopted by the department of environmental conservation shall be prepared by the town board for any zoning district in which the granting of incentives or bonuses have a significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the town board if there are material changes in circumstances that may result in significant adverse impacts. Any zoning ordinance or local law enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.

(e) The town board shall set forth the procedure by which incentives

may be provided to specific lands. Such procedure shall describe:

(i) the incentives, or bonuses, which may be granted by the town to the applicant;

(ii) the community benefits or amenities which may be accepted from the applicant by the town;

(iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the town;

(iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

(f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

(g) Prior to the adoption or amendment of the zoning ordinance or local law pursuant to this section to establish a system of zoning incentives or bonuses the town board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the town. Further, the town board shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.

(h) If the town board determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the town of a sum to be

determined by the board. If cash is accepted in lieu of other community benefit or amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the town board exclusively for specific community benefits authorized by the town board.

4. Invalidations. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any town board.

§ 261-c. Planned unit development zoning districts. A town legislative body is hereby authorized to enact, as part of its zoning local law or ordinance, procedures and requirements for the establishment and mapping of planned unit development zoning districts. Planned unit development district regulations are intended to provide for residential, commercial, industrial or other land uses, or a mix thereof, in which economies of scale, creative architectural or planning concepts and open space preservation may be achieved by a developer in furtherance of the town comprehensive plan and zoning local law or ordinance.

§ 262. Districts. For any or all of said purposes the town board may divide that part of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts.

§ 262-a. Town of Lansing; division of certain parts thereof. For any and all of the purposes set forth in article sixteen of the town law, the town board of the town of Lansing may divide all or part of that portion of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be

deemed best suited to carry out the purposes of this section; including construction, reconstruction, alteration or use of buildings, structures or land. All such regulations adopted by the town board shall be uniform for each class or kind of buildings, throughout such district; but the regulations in one district may differ from those in other districts.

§ 263. Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar thermal, photovoltaics, wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, farm waste electric generating equipment as defined in paragraph (e) of subdivision one of section sixty-six-j of the public service law, and fuel cells; to facilitate the practice of forestry; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

§ 264. Adoption of zoning regulations. 1. Method of procedure. The town board shall provide for the manner in which such regulations, restrictions and the boundaries of such districts including any amendments thereto shall be determined, established and enforced. However, no such regulations, restrictions or boundaries shall become effective until after a public hearing in relation thereto, at which the public shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a paper of general circulation in such town.

Every zoning ordinance and every amendment to a zoning ordinance (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the town board; such minutes shall describe and refer to any map adopted in connection with such zoning ordinance or amendment and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the town, if any, or in such newspaper published in the county in which such town may be located having a circulation in such town, as the town board may designate, and affidavits of the publication thereof shall be filed with the town clerk. Such ordinance shall take effect ten days after such publication, but such ordinance or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the town clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes. Every town clerk shall maintain a separate file or filing cabinet for each and every map adopted in connection with a zoning ordinance or amendment and shall file therein every such map hereafter adopted; said file or filing cabinet to be available at any time during regular business hours for public inspection.

2. Service of written notice. At least ten days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts, including any amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the town upon each person or persons listed below:

(a) The property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto.

(b) The boundary of a city, village or town; upon the clerk thereof.

(c) The boundary of a county; upon the clerk of the board of supervisors or other person performing like duties.

(d) The boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.

3. Additional requirements. The procedural requirements set forth herein shall be in addition to the requirements of the provisions of sections two hundred thirty-nine-l and two hundred thirty-nine-m of the general municipal law relating to review by a county planning board or agency or regional planning council; the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations which are codified in title six part six hundred seventeen of the New York codes, rules and regulations and any other general laws relating to land use and any amendments thereto.

4. Public hearing. The public, including those served notice pursuant to subdivision two of this section, shall have an opportunity to be heard at the public hearing. Those parties set forth in paragraphs (a), (b), (c) and (d) of subdivision two of this section, however, shall not have the right of review by a court as hereinafter provided.

§ 265. Changes. 1. Such regulations, restrictions and boundaries may from time to time be amended. Such amendment shall be effected by a simple majority vote of the town board, except that any such amendment shall require the approval of at least three-fourths of the members of the town board in the event such amendment is the subject of a written protest, presented to the town board and signed by:

(a) the owners of twenty percent or more of the area of land included in such proposed change; or

(b) the owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred feet therefrom; or

(c) the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.

The provisions of the previous section relative to public hearings and official notice shall apply equally to all proposed amendments.

2. Amendments made to any zoning ordinance (excluding any map

incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the town board; such minutes shall describe and refer to any map adopted in connection with such change, amendment or supplement and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the town, if any, or in such newspaper published in the county in which such town may be located having a circulation in such town, as the town board may designate, and affidavits of the publication thereof shall be filed with the town clerk. Such ordinance shall take effect upon filing in the office of the town clerk. Every town clerk shall maintain every map adopted in connection with a zoning ordinance or amendment.

§ 265-a. Exemption of lots shown on approved subdivision plats. 1.

Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning ordinance or local law hereafter adopted, or of a change or amendment thereto, which provisions:

(a) establish or increase lot areas or lot dimensions which are in excess of the areas or dimensions of the lots shown and delineated on a residential subdivision plat which has been duly approved by the planning board, or other board or officer vested with authority to approve subdivision plats, if any, of the town in which the land shown on said plat is situate and duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate; or

(b) establish or increase side, rear or front yard or set back requirements in excess of those applicable to lots under the provisions of the zoning ordinance or local law, if any, in force and effect at the time of the filing of the said duly approved residential subdivision plat or first section thereof

shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

2. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the town:

(a) both a zoning ordinance or local law and a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of three years after the filing of the approved subdivision plat or first section thereof; or

(b) a zoning ordinance or local law in effect in the town but there was no planning board in said town vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(c) no zoning ordinance or local law in the town but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(d) no zoning ordinance or local law in the town and no planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of one year after the filing of the subdivision plat or first section thereof.

3. If such period of exemption would expire within one year from the date of the filing of a section of the approved plat, it shall be extended for that section for a period of one year from the date of the filing of such section.

§ 266. Adoption of first zoning ordinance. 1. In order to avail itself of the powers conferred by this article, such town board shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

2. Where a planning board already exists it may be appointed as the

zoning commission.

3. Such commission shall make a preliminary report and hold one or more public hearings thereon as deemed appropriate by the commission before submitting its final report.

4. The town board shall not hold its public hearing or take action until it has received the final report of such commission.

5. Upon adoption of a resolution by the town board accepting the final report, such commission shall cease to exist as a separate body.

§ 267. Zoning board of appeals. 1. Definitions. As used in this section:

(a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

2. Appointment of members. Each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose.

3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of appeals.

4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any town board may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.

7. Decreasing membership. A town board which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the town board, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

7-a. Training and attendance requirements. (a) Each member of the board of appeals shall complete, at a minimum, four hours of training

each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

(b) To be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.

(d) No decision of a zoning board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Alternate members. (a) A town board may, by local law or

ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by resolution of the town board, for terms established by the town board.

(b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.

(c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

§ 267-a. Board of appeals procedure. 1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.

3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

5. Filing of administrative decision and time of appeal. (a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official, within five business days from the day it is rendered, and shall be a public record. Alternately, the town board may, by resolution, require that such filings instead be made in the town clerk's office.

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official

from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six

hundred seventeen of the New York codes, rules and regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

13. Voting requirements. (a) Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

(b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

§ 267-b. Permitted action by board of appeals. 1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed

from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and

welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§ 267-c. Article seventy-eight proceeding. 1. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the town clerk.

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

4. Power of court. If upon the hearing at the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

§ 268. Enforcement and remedies. 1. The town board may provide by local law or ordinance for the enforcement of this article and of any local law, ordinance or regulation made thereunder. A violation of this article or of such local law, ordinance or regulation is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such local law, ordinance or regulation shall be deemed misdemeanors and for such

purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

2. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used, or any land is divided into lots, blocks, or sites in violation of this article or of any local law, ordinance or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, or land or to prevent any illegal act, conduct, business or use in or about such premises; and upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.

§ 269. Conflict with other laws. Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local law, ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local law, ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards, than are required by the regulations made under authority of this article, the

provisions of such statute, or local law, ordinance or regulation shall govern.

In towns where the town boards have already adopted a zoning ordinance or local law, pursuant to the provisions of chapter three hundred twenty-two of the laws of nineteen hundred twenty-two, or chapter seven hundred fourteen or chapter seven hundred fifteen of the laws of nineteen hundred twenty-six, such boards shall not be required to adopt a new ordinance or local law, and all actions taken and proceedings had by such town boards and boards of appeal under the provisions of said chapter, are hereby ratified and confirmed.

All necessary expenses incurred by any such board in connection with the adoption and enforcement of the zoning ordinance or local law shall be a town charge.

§ 270. Official map, establishment. The town board may establish an official map of that part of the town outside the limits of any incorporated city or village showing the streets, highways and parks theretofore laid out, adopted and established by law and drainage systems may also be shown on such map. Such map shall be final and conclusive with respect to the location and width of streets and highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and protect the public health, safety and general welfare. The clerk of every town which has established such an official map shall immediately file a certificate of that fact with the clerk or registrar of the county in which said town is located.

§ 271. Planning board, creation, appointment. 1. Authorization. The town board of each town is hereby authorized by local law or ordinance, to create a planning board consisting of five or seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The town board

may, as part of the local law or ordinance creating said planning board, provide for the compensation of planning board members.

2. Appropriation for planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. In a town containing one or more villages, or parts thereof, such charges and expenses less fees, if any collected, shall be a charge upon the taxable property of that part of the town outside of said villages and shall be assessed, levied and collected therefrom in the same manner as other town charges. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the town board for such planning board.

3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any town board may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms as provided

by resolution of the town board in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.

7. Decreasing membership. A town board which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.

7-a. Training and attendance requirements. a. Each member of the planning board shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

b. To be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.

c. The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.

d. No decision of a planning board shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Appointment of agricultural member. Notwithstanding any provision of this chapter or of any general, special or local law or ordinance, a town board may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such town, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said town. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the town planning board by reason of serving as a member of a village or county planning board.

13. Rules and regulations. The planning board may recommend to the town board regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law or ordinance of the town. Adoption of any such

recommendations by the town board shall be by local law or ordinance.

14. Report on referred matters; general reports. a. The town board may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the town board or other office or officer of said town having final authority over said matter. The town board may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the town board in said resolution, to submit the report.

b. The planning board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition, the planning board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Alternate members. a. A town board may, by local law or ordinance, or as part of the local law or ordinance creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by resolution of the town board, for terms established by the town board.

b. The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

c. All provisions of this section relating to planning board member

training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

16. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

§ 272-a. Town comprehensive plan. 1. Legislative findings and intent. The legislature hereby finds and determines that:

(a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.

(b) Among the most important powers and duties granted by the legislature to a town government is the authority and responsibility to undertake town comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.

(c) The development and enactment by the town government of a town comprehensive plan which can be readily identified, and is available for use by the public, is in the best interest of the people of each town.

(d) The great diversity of resources and conditions that exist within and among the towns of the state compels the consideration of such diversity in the development of each town comprehensive plan.

(e) The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum town comprehensive plan.

(f) The town comprehensive plan is a means to promote the health, safety and general welfare of the people of the town and to give due consideration to the needs of the people of the region of which the town is a part.

(g) The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities

that may be directly affected thereby.

(h) It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans.

2. Definitions. As used in this section, the term:

(a) "town comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town located outside the limits of any incorporated village or city.

(b) "land use regulation" means an ordinance or local law enacted by the town for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development.

(c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto.

3. Content of a town comprehensive plan. The town comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the town:

(a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the town are based.

(b) Consideration of regional needs and the official plans of other government units and agencies within the region.

(c) The existing and proposed location and intensity of land uses.

(d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental

areas.

(e) Consideration of population, demographic and socio-economic trends and future projections.

(f) The location and types of transportation facilities.

(g) Existing and proposed general location of public and private utilities and infrastructure.

(h) Existing housing resources and future housing needs, including affordable housing.

(i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.

(j) Existing and proposed recreation facilities and parkland.

(k) The present and potential future general location of commercial and industrial facilities.

(l) Specific policies and strategies for improving the local economy in coordination with other plan topics.

(m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.

(n) All or part of the plan of another public agency.

(o) Any and all other items which are consistent with the orderly growth and development of the town.

4. Preparation. The town board, or by resolution of such town board, the planning board or a special board, may prepare a proposed town comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the town board.

5. Referrals. (a) Any proposed comprehensive plan or amendment thereto that is prepared by the town board or a special board may be referred to the town planning board for review and recommendation before action by the town board.

(b) The town board shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as

required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the town planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

6. Public hearings; notice. (a) In the event the town board prepares a proposed town comprehensive plan or amendment thereto, the town board shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the town board shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the town board has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The town board shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the town at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the town clerk and may be made available at any other place, including a public library.

7. Adoption. The town board may adopt by resolution a town comprehensive plan or any amendment thereto.

8. Environmental review. A town comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A town comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact

statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

9. Agricultural review and coordination. A town comprehensive plan and any amendments thereto, for a town containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended town comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

10. Periodic review. The town board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

11. Effect of adoption of the town comprehensive plan. (a) All town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

(b) All plans for capital projects of another governmental agency on land included in the town comprehensive plan adopted pursuant to this section shall take such plan into consideration.

12. Filing of town comprehensive plan. The adopted town comprehensive plan and any amendments thereto shall be filed in the office of the town clerk and a copy thereof shall be filed in the office of the county planning agency.

§ 273. Official map, changes. Such town board is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the town so as to lay

out new streets, highways, drainage systems or parks, or to widen or close existing streets, highways, drainage systems or parks within that part of the town outside the limits of any incorporated city or village. At least ten days' notice of a public hearing on any proposed action with reference to any such change in the official map shall be published in a newspaper of general circulation in such town. Before making any such addition or change, the town board shall refer the matter to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes, when adopted, shall become a part of the official map of the town, and shall be deemed to be final and conclusive with respect to the location of the streets, highways, drainage systems and parks shown thereon. The layout, widening or closing, or the approval of the layout, widening or closing, of streets, highways, drainage systems or parks, by the town board, or the town superintendent of highways, under provisions of law other than those contained in this article, shall be deemed to be an addition or change of the official map, and shall be subject to all the provisions of this article with regard to such additions or changes.

§ 274-a. Site plan review. 1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable zoning ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section two hundred seventy-six of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

2. Approval of site plans. (a) The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans prepared to specifications set

forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the zoning ordinance or local law may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the town board in such zoning ordinance or local law.

(b) When an authorization to approve site plans is granted by the town board pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such

requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units.

(a) Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular site plan will contribute.

(c) In the event the authorized board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

(d) Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to section two hundred seventy-six of this article, the authorized board

shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements, prior to approval by the authorized board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the authorized board or a town department designated by the authorized board to make such estimate, where such departmental estimate is deemed acceptable by the authorized board, shall be furnished to the town by the owner. Such security shall be provided to the town pursuant to the provisions of subdivision nine of section two hundred seventy-seven of this article.

8. Public hearing and decision on site plans. In the event a public hearing is required by ordinance or local law adopted by the town board, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the town at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

9. Notice to county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the county planning board or agency or

regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

10. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

§ 274-b. Approval of special use permits. 1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning

ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.

2. Approval of special use permits. The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Public hearing and decision on special use permits. The authorized

board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the town at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

8. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

9. Court review. Any person aggrieved by a decision of the planning board or such other designated body or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for

determination.

10. Costs. Costs shall not be allowed against the planning board or other administrative body designated by the town board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

11. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

§ 276. Subdivision review; approval of plats; development of filed plats. 1. Purpose. For the purpose of providing for the future growth and development of the town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the town board may, by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways, within that part of the town outside the limits of any incorporated village.

2. Authorization for review of previously filed plats. For the same purposes and under the same conditions, the town board may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats. The term "undeveloped" shall mean those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

3. Filing of certificate. The clerk of every town which has authorized its planning board to approve plats as set forth herein shall immediately file a certificate of that fact with the clerk or register of the county in which such town is located.

4. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) "Subdivision" means the division of any parcel of land into a number of lots, blocks or sites as specified in a local ordinance, law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

(b) "Preliminary plat" means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

(c) "Preliminary plat approval" means the approval of the layout of a proposed subdivision as set forth in a preliminary plat but subject to the approval of the plat in final form in accordance with the provisions of this section.

(d) "Final plat" means a drawing prepared in a manner prescribed by local regulation, that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the planning board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

(e) "Conditional approval of a final plat" means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of

the plat in the office of the county clerk or register as herein provided.

(f) "Final plat approval" means the signing of a plat in final form by a duly authorized officer of a planning board pursuant to a planning board resolution granting final approval to the plat or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the county clerk or register in the county in which such plat is located.

5. Approval of preliminary plats. (a) Submission of preliminary plats. All plats shall be submitted to the planning board for approval in final form provided, however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.

(b) Coordination with the state environmental quality review act. The planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

(c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The time within which the planning board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(1) If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public

hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board; or

(2) If such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two days of filing the notice of completion.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public

hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(e) Planning board not as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The planning board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the preliminary plat within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary

plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the clerk of the planning board as having been granted preliminary approval and a copy of the plat and resolution shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner.

(g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the preliminary plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the town clerk.

(h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the planning board.

6. Approval of final plats. (a) Submission of final plats. Final plats shall conform to the definition provided by this section.

(b) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the planning board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the planning board shall by resolution conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days of its receipt by the clerk of the planning board.

(c) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a

negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Final plats; not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the planning board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section the following shall apply:

(i) Planning board as lead agency; public hearing; notice; decision.

(1) Public hearing on final plats. The time within which the planning board shall hold a public hearing on such final plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(a) if such board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within sixty-two days after the receipt of a complete final plat by the clerk of the planning board; or

(b) if such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two days following filing of the notice of completion.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held

on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall make its decision on the final plat as follows:

(a) if such board determines that the preparation of an environmental impact statement on the final plat is not required, the planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days after the date of the public hearing; or

(b) if such board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the final plat. Within thirty days of the filing of the final environmental impact statement, the planning board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

(ii) Planning board not as lead agency; public hearing; notice; decision.

(1) Public hearing. The planning board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the final plat within sixty-two days after the receipt of a

complete final plat by the clerk of the planning board.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

(a) If the preparation of an environmental impact statement on the final plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the final plat.

(b) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the final plat within sixty-two days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

7. Approval and certification of final plats. (a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the clerk of the planning board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board and a copy of such signed plat shall be filed in the office of the clerk of the planning board or filed with the

town clerk as determined by the town board.

(b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the planning board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the planning board.

(c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within one hundred eighty days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The planning board may extend for periods of ninety days each, the time in which a conditionally approved plat must be submitted for signature if, in the planning board's opinion, such extension is warranted by the particular circumstances.

8. Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the town clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

9. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the final plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the town clerk.

10. Notice to county planning board or agency or regional planning council. When a county planning board or agency or a regional planning council has been authorized to review subdivision plats pursuant to section two hundred thirty-nine-n of the general municipal law, the clerk of the planning board shall refer all applicable preliminary and final plats to such county planning board or agency or regional planning council as provided in that section.

11. Filing of final plat; expiration of approval. The owner shall file in the office of the county clerk or register such approved final plat or a section of such plat within sixty-two days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the planning board constituting final approval by the planning board of a plat as herein provided; or the approval by such board of the development of a plat or plats already filed in the office of the county clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped; or the certificate of the town clerk as to the date of the submission of the final plat and the failure of the planning board to take action within the time herein provided. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the town clerk in each town in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of subdivision two of section two hundred sixty-five-a of this article.

12. Subdivision abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of section five hundred sixty of the real property tax law.

§ 277. Subdivision review; approval of plats; additional requisites.

1. Purpose. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if the plat is entirely or partially undeveloped, the planning board shall require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

2. Additional requirements. The planning board shall also require that:

(a) the streets and highways be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of firefighting equipment to buildings. If there be an official map, town comprehensive plan or functional/master plans, such streets and highways shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive plan of the town;

(b) suitable monuments be placed at block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat;

(c) all streets or other public places shown on such plats be suitably graded and paved; street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices (including necessary ducts and cables or other connecting facilities), sanitary sewers and storm drains be installed all in accordance with standards, specifications and procedures acceptable to the appropriate town departments except as hereinafter provided, or alternatively that a

performance bond or other security be furnished to the town, as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the town, the lots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section two hundred seventy-eight of this article.

4. Reservation of parkland on subdivision plats containing residential units. (a) Before the planning board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular subdivision plat will contribute.

(c) In the event the planning board makes a finding pursuant to paragraph (b) of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the planning board may require a sum of money in lieu thereof, in an amount to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the planning board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the

acquisition of property.

5. Character of the development. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

6. Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

7. Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

8. Installation of fire alarm devices. The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant to this section only with the approval of: (a) the board of supervisors or legislative body of the county if the installation is to be made in an area included in a central fire alarm system established pursuant to paragraph (h) of subdivision one of section two hundred twenty-five of the county law or (b) the town board in any other case unless the installation is to be made in a fire district in a town in which no central fire alarm system has been

established pursuant to subdivision eleven-c of section sixty-four of this chapter, in which case only the approval of the board of fire commissioners of such fire district shall be necessary. Required installations of fire alarm signal devices including necessary connecting facilities shall be made in accordance with standards, specifications and procedures acceptable to the appropriate board.

9. Performance bond or other security. (a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to planning board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a town department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the town by the owner.

(b) Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision ten of section two hundred seventy-six of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.

(c) Form of security. Any such security must be provided pursuant to a written security agreement with the town, approved by the town board and also approved by the town attorney as to form, sufficiency and manner of execution, and shall be limited to: (i) a performance bond issued by a bonding or surety company; (ii) the deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in this state; (iii) an irrevocable letter of credit from a bank located and authorized to do business in this state; (iv) obligations of the United States of America; or (v) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such

improvements. If not delivered to the town, such security shall be held in a town account at a bank or trust company.

(d) Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the town board, the planning board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the planning board.

(e) Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the town board may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the town shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

10. Provision of improvements by town. (a) Adoption of resolution. Notwithstanding the foregoing provisions of this section, with respect to plats approved by the planning board, the town board may adopt a resolution that sidewalks and/or water mains and/or sanitary sewers and/or storm drains required by the planning board pursuant to this section be constructed or installed at the expense of the town as authorized by articles three-A and twelve-C of this chapter or at the expense of an existing improvement district in which the plat is located. Such improvements may also be acquired without consideration by

the town board on behalf of the town or an improvement district as authorized by article three-A, twelve, twelve-A or twelve-C of this chapter.

(b) Establishment of improvement district. If an improvement district has not been created for the area in which the plat is located, the town board may establish or extend an improvement district as provided in this chapter or in any applicable special law for the purpose of constructing or installing or acquiring without consideration such improvements shown on the map of any plat as the town board may determine.

(i) Execution of contracts. The town board resolution shall require that the owner or owners of real property execute such contracts with the town as the town board may deem necessary for the purpose of ensuring that the expense of such construction or installation, including the cost of issuing obligations to raise moneys to pay the expense thereof and interest on such obligations, shall not be an undue burden upon the property deemed benefitted by the agreements or of such improvement district or extension thereof as the case may be and may require a security agreement, including the filing of a surety bond, letter of credit or the deposit of cash or securities reasonably acceptable to the town board as to assure the performance of such contracts.

(ii) Any such surety agreement shall be executed in accordance with this subdivision, and may contain such other provisions as the town board may reasonably determine to be necessary to ensure the performance of such contracts.

11. Suffolk county; disposal of sewage from plats. (a) In the county of Suffolk, when the health department shall have directed that disposal of sewage from the plat shall be provided for by a communal sewerage system, consisting of a treatment plant and collection system, then the Suffolk county sewer agency shall determine, specify and direct the means and method by which the aforesaid system shall be best provided by and at the expense of the developer. Among the alternative means and methods the Suffolk county sewer agency may direct, shall be: (i) that the developer, at its own cost and expense, install, build and construct such system according to such plans, specifications, conditions and

guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost to the Suffolk county sewer agency, or its nominee, and the developer shall also petition to form a county district, but if the Suffolk county sewer agency shall determine that a suitable complete communal sewerage system of adequate size cannot be properly located in the plat or is otherwise not practical, then, (ii) the developer shall install, build and construct temporary cesspools or septic tanks together with a sewage collection system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost, to the Suffolk county sewer agency or its nominee, and in addition thereto, the agency may also require the payment to the Suffolk county sewer agency of a sum of money in an amount to be determined by the Suffolk county sewer agency, and the developer shall also petition to form a county district, or (iii) the developer shall install, build and construct temporary cesspools or septic tanks and, in addition thereto, shall pay to the Suffolk county sewer agency a sum of money in an amount to be determined by the Suffolk county sewer agency and the developer shall also petition to form a county district, or (iv) the developer shall provide such other means and methods or combination thereof as the Suffolk county sewer agency may determine, specify and direct.

(b) Any sums paid to the Suffolk county sewer agency pursuant to any provisions of this section, shall constitute a trust fund to be used exclusively for a future communal sewerage system which shall be owned and operated by a county sewer district, which district shall include the subject plat within its bounds. Such moneys and accrued interest, if any, when paid to such district, shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the subject plat as may exist at the time of the payment of such moneys and accrued interest to such district. Provided, however, that if so directed by local law enacted by the Suffolk county legislature with approval of the county executive:

(i) the Suffolk county sewer agency may refund all moneys on deposit in said trust fund pursuant to agreements entered into before July first, nineteen hundred seventy-eight under the authority of

subparagraphs (ii) and (iii) of paragraph (a) of this subdivision, and all accumulated interest, if any, earned thereon, to the owner as of July first, nineteen hundred eighty-eight of the subject plat from which moneys deposited into said trust fund were collected, or a predecessor in title if said predecessor establishes a superior right to the moneys and accumulated interest; and

(ii) the Suffolk county sewer agency may cease to accept money for deposit into the trust fund if said money is due and owing because of agreements entered into before July first, nineteen hundred seventy-eight under the authority of subparagraphs (ii) and (iii) of paragraph (a) of this subdivision.

(c) The useable value of any communal sewage collection system built under subparagraph (i), (ii) or (iv) of paragraph (a) of this subdivision shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the plat as may exist at the time such system is incorporated into a county sewer district which shall include the subject plat within its bounds.

(d) While planning for and pending the formation or extension of a district contemplated hereunder which will incorporate a plat that has or is to have a dry lateral sewer collection system installed therein, the county legislature may contract in those instances where it feels an emergency exists, and the public health and welfare are in urgent need and will be best served, with any department, agency, subdivision, or political instrumentality of the state, county, town, or village, or an improvement district or a private entity having a treatment plant, to furnish sewerage disposal service to such plat on such terms and conditions and for such consideration as the Suffolk county sewer agency may recommend and the county legislature approves. The county legislature may finance, in whole or in part, pursuant to the local finance law, any expenditure made pursuant to this section. Upon the erection of the contemplated district, it shall reimburse the county for any funds the county may have expended to provide such interim disposal service to the plat.

§ 278. Subdivision review; approval of cluster development. 1.

Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

(b) "zoning districts" shall mean districts provided for in section two hundred sixty-two of this article.

2. Authorization; purpose.

(a) The town board may, by local law or ordinance, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law or ordinance. Such local law or ordinance shall also specify the zoning districts outside the limits of any incorporated village in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the town. Provided, however, that in granting such authorization to the planning board, the town board may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law or ordinance authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to

all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts.

(c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section two hundred seventy-six of this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the town clerk, who shall make appropriate notations and references thereto on the town zoning map required to be maintained pursuant to section two hundred sixty-four of this article.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands.

§ 279. Subdivision review; record of plats. 1. Filing of plat with

county clerk or register. (a) No plat of a subdivision of land showing lots, blocks or sites, shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats. Further, such approval must be endorsed in writing on the plat in such manner as the planning board may designate.

(b) Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or, in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county official map, that such plat has been approved in the manner specified by subdivision two of section two hundred thirty-nine-f of the general municipal law.

2. Notification of filing. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number.

3. Effect of filing. After such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the town.

4. Cession or dedication of streets, highways or parks. (a) All streets, highways or parks shown on a filed or recorded plat are offered for dedication to the public unless the owner of the affected land, or the owner's agent, makes a notation on the plat to the contrary prior to final plat approval. Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body, or until it has been condemned by the town for use as a public street, highway or park.

(b) In the event that such approved plat is not filed or recorded prior to the expiration date of the plat approval as provided in section two hundred seventy-six of this article, then such offer of dedication shall be deemed to be invalid, void and of no effect on and after such expiration date.

§ 280. Permits for buildings in bed of mapped streets. For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals, or other similar board, in any town which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the town. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such town. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

§ 280-a. Permits for buildings not on improved mapped streets. 1. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county or town highway, or (b) a street shown upon a plat approved by the planning board as provided in sections two hundred seventy-six and two hundred seventy-seven of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats.

2. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the town board or planning board, if empowered by the town board in accordance with standards and specifications approved by the town board, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway.

Alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the town by the owner. Such performance bond shall be issued by a bonding or surety company approved by the town board or by the owner with security acceptable to the town board, and shall also be approved by such town board as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with section two hundred seventy-seven of this article.

3. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any town which has established a board having the power to make variances or exceptions in zoning regulations for: (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or (b) an area variance pursuant to section two hundred sixty-seven-b of this chapter, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review by certiorari order issued out of a special term of the supreme court in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

4. The town board may, by resolution, establish an open development

area or areas within the town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the planning board, if one exists, or of the town board if a planning board does not exist. If a planning board exists in such town, the town board, before establishing any such open development area or areas, shall refer the matter to such planning board for its advice and shall allow such planning board a reasonable time to report.

5. For the purposes of this section the word "access" shall mean that the plot on which such structure is proposed to be erected directly abuts on such street or highway and has sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen feet shall presumptively be sufficient for that purpose.

§ 281. Municipal improvements in streets. No public municipal street utility or improvement shall be constructed by the town in any street or highway within that part of the town outside the limits of any incorporated city or village until it has become a public street or highway and is duly placed on the official map or plan, provided, however, that subject to the discretion of the town board, a subsurface utility or improvement operated for revenue by the town or by a special district may be constructed by the town in a private street, provided a public easement satisfactory to the town board is obtained for such utility or improvement.

§ 282. Court review. Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the town, may have the decision reviewed by a special term of the supreme court in the manner provided by article seventy-eight of the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the

decision in the office of the town clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

§ 283. Issuance of licenses and permits in certain towns. If, in any town of the first class at the time of the enactment of this chapter, there exists a building department, set up as an adjunct of the planning board, all licenses or permits, whenever and in the manner required by any building zone ordinance, local law or building code, shall be issued by said department, and all fees therefor be collected as provided by the requirements of the building zone ordinance, local law or building code.

§ 283-a. Coordination with agricultural districts program. 1. Policy of local governments. Local governments shall exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm operations in contravention of

the purposes of article twenty-five-AA of the agriculture and markets law, unless it can be shown that the public health or safety is threatened.

2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the town board, planning board, or zoning board of appeals pursuant to this article, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The town board, planning board, or zoning board of appeals shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, or town board, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations

identified in the agricultural data statement.

5. Notice to county planning board or agency or regional planning council. The clerk of the town board, planning board, or zoning board of appeals shall refer all applications requiring an agricultural data statement to the county planning board or agency or regional planning council as required by sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law.

§ 284. Intermunicipal cooperation in comprehensive planning and land use regulation. 1. Legislative intent. This section is intended to illustrate the statutory authority that any municipal corporation has under article five-G of the general municipal law and place within land use law express statutory authority for cities, towns and villages to enter into agreements to undertake comprehensive planning and land use regulation with each other or one for the other, and to provide that any city, town or village may contract with a county to carry out all or a portion of the ministerial functions related to the land use of such city, town or village as may be agreed upon. By the enactment of this section the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of community resources, especially where such resources span municipal boundaries.

2. Authorization and effects. (a) In addition to any other general or special powers vested in a town to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each town is hereby authorized to enter into, amend, cancel and terminate agreements with any other municipality or municipalities to undertake all or a portion of such powers, functions and duties.

(b) Any one or more municipalities located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, are hereby

authorized to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality or municipalities related to land use planning and zoning. Such functions may include, but are not limited to, acting in an advisory capacity, assisting in the preparation of comprehensive plans and land use regulations to be adopted and enforced by such municipality or municipalities and participating in the formation and functions of individual or joint administrative boards and bodies formed by one or more municipalities.

(c) Such agreements shall apply only to the performance or exercise of any function or power which each of the municipal corporations has the authority by any general or special law to prescribe, perform, or exercise separately.

3. Definitions. As used herein:

(a) "Municipality", means a city, town or village.

(b) "Community resource", means a specific public facility, infrastructure system, or geographic area of special economic development, environmental, scenic, cultural, historic, recreational, parkland, open space, natural resource, or other unique significance, located wholly or partially within the boundaries of one or more given municipalities.

(c) "Intermunicipal overlay district", means a special land use district which encompasses all or a portion of one or more municipalities for the purpose of protecting, enhancing or developing one or more community resources as provided herein.

4. Intermunicipal agreements. In addition to any other powers granted to municipalities to contract with each other to undertake joint, cooperative agreements any municipality may:

(a) create a consolidated planning board which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be determined

by such agreement;

(c) create a comprehensive plan and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district for the purpose of protecting, enhancing or developing community resources that encompass two or more municipalities.

5. Special considerations. (a) Making joint agreements. Any agreement made pursuant to the provisions of this section may contain provisions as the parties deem to be appropriate, and including provisions relative to the items designated in paragraphs a through m inclusive as set forth in subdivision two of section one hundred nineteen-o of the general municipal law.

(b) Establishing the duration of agreement. Any agreement developed pursuant to the provisions of this section may contain procedures for periodic review of the terms and conditions, including those relating to the duration, extension or termination of the agreement.

(c) Amending local laws or ordinances. Local laws or ordinances shall be amended, as appropriate, to reflect the provisions contained in intermunicipal agreements established pursuant to the provisions of this section.

6. Appeal of action by aggrieved party or parties. Any officer, department, board or bureau of any municipality with the approval of the legislative body, or any person or persons jointly or severally aggrieved by any act or decision of a planning board, zoning board of appeals or agency created pursuant to the provisions of this section may bring a proceeding by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the town clerk. Commencement of the proceeding shall stay proceedings upon the decision from which the appeal is taken. All issues in any proceeding

under this section shall have a preference over all other civil actions and proceedings.

7. Any agreements made between two or more municipalities pursuant to article five-G of the general municipal law or any other law which provides for the undertaking of any land use regulation or activity on a joint, cooperative or contract basis, if valid when so made, shall not be invalidated by the provisions of this section.

8. The provisions of this section shall be in addition to existing authority and shall not be deemed or construed as a limitation, diminution or derogation of any statutory authority authorizing municipal cooperation.

§ 285. Separability clause. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 17

CEMETERIES

Section 290. Duties of town board.

291. Burial grounds.

292. Transfer of burial grounds to cemetery corporation.

292-a. Cemetery and funeral home combinations.

293. Exception.

294. Armed forces' burial plot.

295. Removal of remains of deceased members of armed forces.

296. Abandonment of cemeteries.

§ 290. Duties of town board. The town board shall lay out into burial lots any burial grounds conveyed to them; and within one year after conveyance to them they shall cause to be recorded in the office of the clerk of the county in which they reside a plot or plots of the ground so laid out by them, which shall clearly indicate the number and location of the several lots, which plots shall be duly certified to, under the hands and seals of the supervisor and town clerk, and acknowledged before an officer authorized to take proof and acknowledgment of deeds. They shall designate and set aside certain lots which shall be free from the interment of the remains of indigent persons, deceased, and shall sell and convey, by direction of a majority of the board, under the hands and seals of the supervisor and town clerk, burial lots, at such terms as may be agreed upon between the parties, and expend the moneys realized from such sale in improving and preserving the particular burial ground from the sale of whose lots the moneys were received. All moneys realized from the sale of burial lots shall, upon the receipt thereof, be paid over to the supervisor of the town to be retained by him as a separate fund and paid out only on the order of a majority of such town board.

§ 291. Burial grounds. 1. The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the town board. In any town the town board may adopt regulations for the proper care of any such cemetery and burial ground and regulating the burial of the dead therein. It shall be the duty of the town board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground. The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not

vested by other provisions of law in the town or in trustees or other corporate body, and provide for the preservation, care and fencing of any such cemetery and the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment and such duties shall be performed under the supervision of the town board, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section shall be a town charge, and the town board shall appropriate and provide annually the moneys necessary for carrying out the provisions of this section, and make the same available for the proper officer or persons by whom the moneys are required to be expended. The town board may also receive and execute any trust for the care of any cemetery which the town is required to care for pursuant to the provisions of this section and to receive and execute any trust for the care of lots in any such cemetery.

2. Burial grounds and cemeteries of which the title is vested in or the care or control is charged upon any town, by virtue of this section, shall not be taxed or assessed for any local improvement or other purpose whatsoever by any village, and no action shall be maintained against any town to recover the cost of any local improvement or municipal charge, based on town ownership or care of such burial grounds, the provisions of any special, local or general statute whatsoever to the contrary notwithstanding.

3. Upon the adoption of a resolution therefor, the town board may construct and maintain permanent improvements in any one or more of the classes of cemeteries described herein and may acquire, by purchase or condemnation, additional lands for cemetery or burial ground purposes, whenever in the judgment of the town board it is necessary or advisable that such improvements be made or additional lands be acquired. If the expenditure for such improvements or acquisition is in excess of one

thousand five hundred dollars and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum. The improvements so made or the lands so acquired shall be used only for the purposes authorized by this article but such cemeteries or burial grounds so improved or enlarged shall not be subject to conveyance or transfer pursuant to section two hundred ninety-two of this article. The expense of such improvements and/or the acquiring of such lands may be financed in the manner provided in article fifteen of this chapter for the financing of general improvements.

4. Notwithstanding any other provision of law, upon the adoption of a resolution therefor, the town board of the town of Southampton may transfer title to the cemetery vested in such town, located at the corner of Madison street and Latham street and bearing Suffolk county tax map identification number 473609-3-4-27, to the village of Sag Harbor, provided, however, that such transfer shall be made only upon the adoption of a resolution by the board of trustees of the village of Sag Harbor, requesting the town of Southampton to make such transfer.

§ 292. Transfer of burial grounds to cemetery corporation. Any town may convey and transfer its right, title and interest in any burial grounds within the limits of and belonging to the town, or belonging to the town and individual lot owners, to a cemetery corporation authorized to hold and maintain property within the town for cemetery purposes, organized or to be organized under the membership corporations law. The deed of conveyance shall be executed by the supervisor, after the town board shall have authorized such conveyance.

§ 292-a. Cemetery and funeral home combinations. 1. No town shall, directly or indirectly:

(a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;

- (b) commingle funds used for cemetery purposes with a funeral entity;
- (c) direct or carry on its cemetery related business or affairs with a funeral entity;
- (d) authorize control of its cemetery related business or affairs by a funeral entity;
- (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (g) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

2. Only the provisions of paragraphs (a) and (b) of subdivision one of this section shall apply to towns with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

3. For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

§ 293. Exception. All provisions of the preceding sections of this article which are inconsistent with the provisions of chapter seventy-six of the laws of eighteen hundred sixty-nine, as amended by chapter four hundred thirty-two of the laws of eighteen hundred ninety-nine, shall not apply to Greenfield cemetery in Hempstead, Nassau county, or to the trustees or management thereof.

§ 294. Armed forces' burial plot. 1. The town board in each of the towns of this state may upon the application in writing of any veteran armed forces' association in the town, or upon a petition of any writing of five or more veterans of the armed forces of the United States in towns where no veteran armed forces organization exists, purchase or provide an armed forces' plot in one or more cemeteries where no burial plots are now owned by armed forces organizations, in which burial plots deceased members of the armed forces of the United States may be interred and, except in the county of Broome, may also provide for the annual care of armed forces' burial plots in cemeteries, at the rate of not to exceed twenty dollars for each grave of a member of the armed forces in such burial plot or plots, and the expense shall be included in the town expenses, assessed, levied and collected in the same manner as other town expenses are levied and collected.

2. In the county of Broome, the board of supervisors shall provide for the annual care of armed forces' burial plots, either heretofore or hereafter established, in all cemeteries in such county, at the rate aforesaid, and the expense thereof shall be a county charge audited, assessed, levied and collected in the same manner as are other county charges.

§ 295. Removal of remains of deceased members of armed forces. Upon a verified petition presented to a judge of a court of record by any armed forces' organization in any town or city in this state by a majority of its officers, or a majority of any memorial committee in any town or city where there are two or more veteran armed forces' organizations, or in towns or cities where there are no veteran armed forces' organizations, upon the petition of five or more veterans of the armed forces, the judge to whom said verified petition is presented shall make an order to show cause, returnable before him or her at a time and place within the county in not less than fourteen or more than twenty days from the date of presentation of said petition, why the remains of any deceased members of the armed forces buried in potter's field, or in any neglected or abandoned cemeteries, should not be removed to and

reinterred in a properly kept incorporated cemetery in the same town or city or in a town adjoining the town or city in which the remains of a deceased member of the armed forces are buried, and to fix the amount of the expenses for such removal and reinterment, and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is sought to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioners are a majority of the officers of a veteran armed forces organization, or a majority of a memorial committee in towns or cities where two or more veteran armed forces organizations exist, or that the petitioners are honorably discharged veterans of the armed forces in towns or cities where no veteran armed forces organization exists, or that the petitioners have a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service and are in towns or cities where no veteran armed forces organizations exist, or that the petitioners are discharged LGBT veterans, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service and are in towns and cities where no veteran armed forces organizations exist, and (1) the name of the deceased member or members of the armed forces, whose remains are sought to be removed, and if known the unit in which he, she or they served; (2) the name and location of the cemetery in which he or she is interred and from which removal is asked to be made; (3) the name and location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no objection is made thereto, he or she shall make an order directing the removal of the remains of said deceased member or members of the armed forces to the cemetery designated in the petition within the town or city or within a town adjoining the town or city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the county in

which the town or city is situated from which the removal is made and such expenses shall be a county charge and audited by the board of supervisors of the county and paid in the same manner as other county charges. On and after the removal and reinterment of the remains of the deceased member or members of the armed forces in the armed forces' plot, the expenses for annual care of the grave in the armed forces' burial plot to which the removal is made shall be annually provided by the town or city in which the remains were originally buried, at the rate of not to exceed twenty dollars per grave, and shall be paid annually to the incorporated cemetery association to which the remains of each deceased member of the armed forces may be removed and reinterred. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased member of the armed forces were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relative of the deceased member or members of the armed forces, or the officer of any cemetery association in which the remains of the deceased member or members of the armed forces were originally interred, or the authorities of the county in which the member or members of the armed forces were originally buried, may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased member of the armed forces shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made and in each case the final order shall provide the amount of the expenses of such removals and reinterment and resetting of the headstone or monument, including the expenses of the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in the cemetery to which such removal is permitted, such old headstone or monument need not be so removed and reset, in which case such final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals and reinterments. Upon completion of the removal, reinterment and resetting of the headstones or monuments, the person or persons having charge of the same shall make a verified report of the removal, reinterment and

resetting of the headstone or monument and file the report in the clerk's office of the proper county. The words "member of the armed forces" shall be construed to mean a member of the armed forces who served in the armed forces of the United States and who (5) was honorably discharged from such service, or (6) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (7) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, and the words "armed forces plot" shall be construed to mean a plot of land in any incorporated cemetery set apart to be exclusively used as a place for interring the remains of deceased veterans of the armed forces of the United States.

§ 296. Abandonment of cemeteries. Upon a verified petition presented to a judge of a court of record by any supervisor of any town in this state, the judge to whom said verified petition is presented shall make an order to show cause, returnable before him at a time and place within the county in not less than twenty days from the date of presentation of said petition, why the remains of any deceased person buried in potter's field, or in any neglected or abandoned cemeteries in which no deceased person shall have been interred within twenty years, should not be removed to and reinterred in a properly kept incorporated cemetery in the same town or in a town or city adjoining the town in which the remains of each deceased person or persons are buried, and to fix the amount of expenses for such removal and reinterment, and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioner is a supervisor of the town in which said cemetery is located and (1) the name of the deceased person or persons whose remains are sought to be removed, if known; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and location of the incorporated cemetery to which

the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no objection is made thereto, he shall make an order directing the removal of the remains of said deceased person or persons to the cemetery designated in the petition within the town or city or within a town adjoining the town or city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the town in which the cemetery is situated from which the removal is made and such expenses shall be a town charge and audited by the town board and paid in the same manner as other town charges. On and after the removal and reinterment of the remains of any deceased person or persons, the expenses for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the town in which the remains were originally buried at a rate not to exceed twenty dollars per grave, and shall be paid annually to the incorporated cemetery association to which the remains of each deceased person may be removed or reinterred. Any town owning a lot or lots in a cemetery maintained by an incorporated cemetery association in which the remains of deceased persons have been or may be buried pursuant to this section, however, may pay such association an amount sufficient to provide perpetual care therefor. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased person were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relative of the deceased person or the officer of any cemetery association in which the remains of the deceased person were originally interred may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased person shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made and in each case the final order shall provide the amount of the expenses of such removals and reinterment and resetting of the

headstone or monument, including the expenses of the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in the cemetery to which such removal is permitted, such old headstone or monument need not be so removed and reset, in which case such final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals and reinterments. Upon completion of the removal, reinterment and resetting of the headstones or monuments, the person or persons having charge of the same shall make a verified report of the removal, reinterment and resetting of the headstone or monument and file the report in the clerk's office of the proper county.

After said bodies shall have been removed and reinterred in the manner prescribed by said order, said lands in which such deceased persons were originally interred shall be available for and subject to such uses for town purposes as the town board of such town may determine and may be conveyed or otherwise disposed of in the same manner as other town lands.

ARTICLE 18

FENCES, STRAYS AND POUNDS

Section 300. Apportionment of division fence.

301. Lands lying open.

302. Division fence on change of title.

303. Settlement of disputes.

304. Powers of fence viewers.

305. Neglect to make or repair division fence.

306. Fence destroyed by accident.

307. Damages for insufficient fence.

308. Damages for omitting to build fence.

309. Use of barbed or other wire for division fence.

310. Lien upon strays.

311. Notice of lien to town clerk.

312. Impounding strays.

313. Notice of strays to owner.

- 314. Charges for notice of strays.
- 315. Fees of fence viewers as to strays.
- 316. Foreclosure of lien upon strays.
- 317. Notice of sale of strays by fence viewers.
- 318. Proceeds of sale of strays.
- 319. Notice to owner of strays of fence viewers' meeting.
- 320. Duties of fence viewers as to strays.
- 321. Foreclosure of lien upon strays by action.
- 322. Surplus money upon sale of strays.
- 323. Damages from other personal property.
- 324. Penalty of conversion of floating lumber.
- 325. Application of article.
- 326. Erection and discontinuance of pounds.
- 327. Pound-master's fees.

§ 300. Apportionment of division fence. Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands, unless both of said adjoining owners shall agree to let their said lands lie open, along the division line, to the use of all animals which may be lawfully upon the lands of either; provided, however, that the owner of an adjoining tract of land who does not keep such animals thereon within five years of the date of the erection or repair of a division fence shall not be obligated or liable for erecting, maintaining or repairing such a division fence under this article. Unless otherwise agreed, an adjoining owner who erects or repairs a division fence shall be entitled to recover from the owner of the other adjoining tract, twenty percent of the proportionate cost thereof otherwise ascribable to such other owner for each year or part thereof in which the other adjoining tract is regularly used for keeping animals occurring within five years of the date of such erection or repair. When the adjoining lands shall border upon any of the navigable lakes, streams or rivers of the state, the owners of the lands shall make and maintain the division fence between them down to the line of low water mark, in such lakes, streams or rivers except those lands which overflow annually so as to be so submerged with water that no permanent fence can

be kept thereon, and known as low flat lands; and when adjoining lands shall be bounded by a line between the banks of streams of water not navigable, and the owners or occupants thereof cannot agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

§ 301. Lands lying open. When the owners of adjoining lands shall choose to let them lie open, as provided in section three hundred, neither of such owners shall be liable to the other in any action or proceeding for any damages done by animals lawfully upon the other's premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. Either owner of any lands so lying open and adjoining may, unless the agreement is for a specified period, and after such agreement has expired may then have the same inclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, whereupon it shall be the duty of both parties to build and maintain their several proportions of a division fence.

§ 302. Division fence on change of title. Whenever a subdivision or new apportionment of any division fence shall become necessary by reason of transfer of the title of either of the adjoining owners, to the whole or any portion of the adjoining lands, by conveyance, devise or descent, such subdivision or new apportionment shall thereupon be made by the adjoining owners affected thereby; and either adjoining owner shall refund to the other a just proportion of the value at the time of such transfer of title of any division fence that shall theretofore have been made and maintained by such other adjoining owner, or the person from whom he derived his title, or he shall build his proportion of such division fence. The value of any fence, and the proportion thereof to be paid by any person, and the proportion to be built by him, shall be determined by any two of the fence viewers of the town, in case of disagreement.

§ 303. Settlement of disputes. If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such disputes shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice, to make such choice, the other party may select both. The fence viewers, in all matters heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they cannot agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute, and all parties holding under them.

§ 304. Powers of fence viewers. Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpoenas for witnesses. A subpoena issued under this section shall be regulated by the civil practice law and rules. Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers or either of them shall be liable to an action for the same with costs.

§ 305. Neglect to make or repair division fence. If any person who is liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to writing,

and signed by the fence viewers making it. If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him with costs.

§ 306. Fence destroyed by accident. Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it. If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him with costs.

§ 307. Damages for insufficient fence. Whenever the electors of any town shall have made any rule or regulation prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence. When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established.

§ 308. Damages for omitting to build fence. If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be put out of repair, he shall not be allowed to have and maintain any action for damages incurred by beast coming thereon from adjoining lands, where such beasts are lawfully kept, by reason of

such defective fence, but shall be liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be reduced to writing and signed by the fence viewers making the same, but shall be only prima facie evidence of the amount of such damages.

§ 309. Use of barbed or other wire for division fence. Barbed or other wire may be used in the construction of any division fence, provided, that such fence, be built in the following manner: The fence shall be of at least four strands of wire with the posts and supports of such fence, at such distances apart, as the fence viewers of the town may prescribe, but the posts thereof shall be no further apart than fourteen feet; and such fence shall be otherwise substantially built and a reasonable sufficient inclosure for holding the particular kind or class of cattle or animals usually pastured on either side of the fence. Nothing contained in section three hundred seven shall be construed to authorize the electors of any town to prohibit the use of wire fences, for division fences, if such fences comply with the requirements of this section. Whenever such fence shall become so out of repair as to be unsafe, it shall be the duty of the owner or owners to immediately repair the same. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section fifty-two of the railroad law.

§ 310. Lien upon strays. Whenever any person shall have any strayed horses, cattle, sheep, swine or other beast upon his inclosed land, or shall find any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence required of him by law, such person may have a lien with priority over all other liens upon such beasts, for so long as such person shall retain possession of such beasts, for the

damage sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them, and all fees and costs made thereon, and he may keep such beast until such damages, charges, fees and costs are paid, or such lien is foreclosed, upon complying with the provisions of this article relating thereto.

§ 311. Notice of lien to town clerk. If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs. The town clerk shall record the notice in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such books shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

§ 312. Impounding strays. Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they be redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law.

§ 313. Notice of strays to owner. Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound, as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.

§ 314. Charges for notice of strays. The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beasts described in the notice. If the charges, damages, costs and fees are not agreed upon between the person delivering the notice and the owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers cannot agree, they shall select another to act with them, and the decision of any two of them shall be final.

§ 315. Fees of fence viewers as to strays. Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts are kept, and seventy-five cents for a certificate of the charges as ascertained by them.

§ 316. Foreclosure of lien upon strays. If the owner of such beasts shall not redeem the same within one month after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of his keeping such beasts and the proceedings thereon.

§ 317. Notice of sale of strays by fence viewers. After such one month, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of such beasts, by advertisement posted

in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. In the event that the town maintains a website, such information may also be provided on the website. At the time and place mentioned, such fence viewers shall sell such beasts to the highest bidder, unless redeemed by the owner.

§ 318. Proceeds of sale of strays. Out of the proceeds from such sale, the fence viewer shall retain and pay the sums charged for such notices, fees and costs, together with the sums specified in the certificate for keeping the beasts, and damages done by them; and the like charges for the sale as are allowed on sales under executions issued out of justices' courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same.

§ 319. Notice to owner of strays of fence viewers' meeting. When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him; if he resides elsewhere, and his post-office address is known, such notice shall be served by mail or personally.

§ 320. Duties of fence viewers as to strays. The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpoenas, examine witnesses and take any competent evidence of the facts and circumstances necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done, and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimants' lien is not enforceable, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.

§ 321. Foreclosure of lien upon strays by action. When such lien is foreclosed by action, all questions relating to damages, charges, sufficiency of fence, and from where and how such beasts came upon the lands of the person claiming such damages and charges shall be proven upon the trial of such action, and no certificate of fence viewers upon such questions shall then be necessary.

§ 322. Surplus money upon sale of strays. If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the supervisor of the town, or, in cities, to the treasurer, and their receipt shall be a legal discharge to the keeper of such beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the supervisor of the town, or, in cities, to the treasurer he shall forfeit to the town or city double the sum so remaining in his hands, together with the amount of such moneys.

§ 323. Damages from other personal property. When any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or plank, in rafts or otherwise, or other personal property shall have drifted upon his lands, he shall be entitled to the same remedies and shall proceed therein in the same manner and with the same powers as herein provided with respect to beasts found doing damage, so far as such provisions are applicable. He must deliver his notice of lien to the town clerk, describing the property, within thirty days after it lodges upon his lands, and he shall keep the same in some convenient place without removal to a pound until the property is sold or reclaimed. The same officer shall conduct proceedings therein as in proceedings where beasts are found doing damage, and all proceeds of sale shall be, in like manner, paid over and applied, subject to the same penalties and liabilities, and with the

same force and effect. The fee of the town clerk for filing and recording such notices of lien shall be one dollar and the charges of the land owner claiming such lien and delivering such notice to the town clerk, pursuant to this section, shall be at the rate of five cents for each such stray, but shall in no event exceed the sum of fifty dollars upon any one lien. Any lien for logs, timber, boards or planks, in rafts or otherwise, filed herein may be discharged in the manner provided in sections nineteen and twenty of the lien law, with reference to the discharge of mechanics' liens, so far as such provisions are applicable.

§ 324. Penalty of conversion of floating lumber. Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards or plank, floating in any of the waters of this state, or lying on the banks or shores of any such waters, or on any island where the same may have drifted, shall, for every offense, forfeit to the owner of such logs, or other lumber, three times the value thereof. Nothing contained in this section shall be construed to extend to that kind of lumber called driftwood.

§ 325. Application of article. The villages and cities of this state shall be considered towns for the purpose of construing provisions of this article relating to strays; and the trustees of the village and the alderpersons, council members or members of the legislative body of the city shall be fence viewers therein for such purposes.

§ 326. Erection and discontinuance of pounds. Whenever the electors of any town shall determine at a biennial town election to erect one or more pounds therein, and whenever a pound shall now be erected in any town, the same shall be kept under the care and direction of a pound-master, to be appointed for that purpose. The electors of any town may, at a biennial town election, discontinue any pounds therein.

§ 327. Pound-master's fees. The pound-masters shall be allowed the following fees for their services, to wit: For taking into the pound and discharging therefrom every horse, mule and head of cattle, fifteen cents; for every other beast, ten cents.

ARTICLE 19

LAWS REPEALED; TEMPORARY PROVISIONS AND SAVING CLAUSE

Section 340. Laws repealed.

341. Temporary provisions and saving clause.

342. When to take effect.

§ 340. Laws repealed. Chapter sixty-three of the laws of nineteen hundred nine, entitled "An act relating to towns, constituting chapter sixty-two of the consolidated laws," and all acts amendatory thereof and supplemental thereto, constituting the town law as heretofore in force, are hereby repealed, except as otherwise provided herein.

§ 341. Temporary provisions and saving clause. 1. If, at the time this section takes effect, a town shall have an assessed valuation of ten million dollars or more as shown by the latest completed assessment-roll thereof, or adjoins a city having a population of three hundred thousand or more, as shown by the latest federal or state census or enumeration, or if such town has a population of five thousand or more, and less than ten thousand, such town may become a town of the first class on and after January first, nineteen hundred thirty-four, if it be so determined as herein provided. Such population shall be determined in accordance with the decennial federal census of nineteen hundred thirty. Not later than June fifteenth, nineteen hundred thirty-three, the town board of such town may adopt a resolution that the town shall be a town of the first class, which resolution shall be subject to referendum as herein provided. Within four days after the adoption of any such resolution, the town clerk shall cause copies thereof to be posted in ten public places in the town, with a statement of the date of its adoption. Within fourteen days after the adoption of such resolution, a

petition may be filed requiring such resolution to be submitted to the electors of the town, qualified to vote thereon, for their approval. The form of the question to be submitted thereon shall be "Shall the resolution of the town board of the town of that the town become a town of the first class, be approved?" If no such resolution shall have been adopted within the time above provided, a petition may be filed, not later than June twenty-ninth, nineteen hundred thirty-three, requiring the submission to such electors of the proposition "Shall the town of become a town of the first class?" A petition for any of the above purposes shall be filed with the town clerk, and shall be signed and duly acknowledged by at least one hundred electors of the town, qualified to vote on the question or proposition. The question or proposition for which the petition shall have been filed shall be submitted by the town board at a special town meeting to be held at a time, not later than August first, nineteen hundred thirty-three, and at such place or places in the town, as may be fixed by the town board. Notice of the election shall be given, such meeting held and the votes canvassed and result certified and returned in the manner provided by the provisions of the town law relating to special town meetings as in force immediately prior to the taking effect of this section. Only a qualified elector of the town owning property in the town assessed upon the last preceding assessment-roll thereof shall be allowed to vote at such meeting. If the town board shall have adopted such a resolution and no petition shall have been filed, within the time above provided, for a referendum thereon, or if a majority of the votes cast on any proposition or question submitted as herein provided be in the affirmative, such town shall be a town of the first class on January first, nineteen hundred thirty-four, and all of the provisions of this act applying to such a town shall apply thereto. If, by any method above prescribed, it shall have been determined that such a town is to be in the first class, the supervisor and town clerk not later than August fifteenth, nineteen hundred thirty-three, shall make and file in the offices of the department of state and department of audit and control their affidavit in duplicate setting forth the facts showing such determination and the manner in which it was effected. If such town, as the result of such a resolution or election, is to become a town of the first class, and party candidates for town offices are nominated at fall

primaries, the designating petitions under the election law shall be only for elective offices of a town of such class. However, a designating petition, properly signed and executed, when offered for filing to the board of elections shall be received if it pertains to any town offices of a town of the first class which may be filled at the biennial town meeting in the year nineteen hundred thirty-three, and the name and title of office of a candidate designated therein for nomination to a town office which cannot be filled at such biennial town meeting, or for a term for which an officer may not be voted for thereat, and the names and titles of offices of candidates designated for more offices of the same kind than may be voted for at such town meeting, shall be deemed stricken from such petition and to be no part thereof.

2. Not later than June fifteenth, nineteen hundred thirty-three, the town board of any town may adopt a resolution that the office of town clerk shall be an appointive office in such town, which resolution shall be subject to referendum as herein provided. Within four days after the adoption of any such resolution, the town clerk shall cause copies thereof to be posted in ten public places in the town, with a statement of the date of its adoption. Within fourteen days after the adoption of such resolution, a petition may be filed, requiring such resolution be submitted to the electors of the town, for their approval. The form of the question to be submitted thereon shall be "Shall the resolution of the town board of the town of, that the office of town clerk shall be an appointive office, be approved?" If no such resolution shall have been adopted within the time above provided, a petition may be filed not later than June twenty-ninth, nineteen hundred thirty-three, requiring the submission to such electors of the proposition "Shall the office of town clerk be an appointive office?" A petition for any of the above purposes shall be filed with the town clerk, and shall be signed and duly acknowledged by at least one hundred electors of the town. The question or proposition for which the petition shall have been filed shall be submitted by the town board at a special town meeting to be held at a time, not later than August first, nineteen hundred thirty-three, and at such place or places in the town, as may be fixed by the town board. Notice of the election shall be given, such meeting

held and the votes canvassed and result certified and returned in the manner provided by the provisions of the town law relating to special town meetings as in force immediately prior to the taking effect of this section. Every elector of the town shall be entitled to vote at such meeting. If the town board shall have adopted such a resolution and no petition shall have been filed, within the time above provided, for a referendum thereon, or if a majority of the votes cast on any proposition or question submitted as herein provided be in the affirmative, the office of town clerk shall thereafter be an appointive office in such town and no town clerk shall be elected at the biennial town meeting in the year nineteen hundred thirty-three, and upon the expiration of the term of office of the town clerk for whom no successor shall be elected, the town board shall appoint a town clerk who shall take and hold office for the term provided by this chapter.

3. Not later than June fifteenth, nineteen hundred thirty-three, the town board of any town may adopt a resolution that the office of town superintendent of highways shall be an appointive office in such town, which resolution shall be subject to referendum as herein provided. Within four days after the adoption of any such resolution, the town clerk shall cause copies thereof to be posted in ten public places of the town, with a statement of the date of its adoption. Within fourteen days after the adoption of such resolution, a petition may be filed requiring such resolution be submitted to the electors of the town, for their approval. The form of the question to be submitted thereon shall be "Shall the resolution of the town board of the town of, that the office of town superintendent of highways shall be an appointive office, be approved?" If no such resolution shall have been adopted within the time above provided, a petition may be filed not later than June twenty-ninth, nineteen hundred thirty-three, requiring the submission to such electors of the proposition "Shall the office of town superintendent of highways be an appointive office?" A petition for any of the above purposes shall be filed with the town clerk, and shall be signed and duly acknowledged by at least one hundred electors in a town of the first class, and by at least twenty-five electors in a town of the second class. The question or proposition for which the petition shall have been filed shall be submitted by the town board at a special

town meeting to be held at a time, not later than August first, nineteen hundred thirty-three, and at such place or places in the town, as may be fixed by the town board. Notice of the meeting shall be given, such meeting held and the votes canvassed and result certified and returned in the manner provided by the provisions of the town law relating to special town meetings, as in force immediately prior to the taking effect of this section. Every elector of the town shall be entitled to vote at such meeting. If the town board shall have adopted such resolution and no petition shall have been filed, within the time above provided, for a referendum thereon, or if a majority of the votes cast on any proposition or question submitted as herein provided be in the affirmative, the office of town superintendent of highways shall thereafter be an appointive office in such town, and no town superintendent of highways shall be elected at the biennial town meeting in the year nineteen hundred thirty-three, and upon the expiration of the term of office of the town superintendent of highways for whom no successor shall be elected, the town board shall appoint a town superintendent of highways who shall take and hold office for the term provided by this chapter.

3-a. Not later than June fifteenth, nineteen hundred thirty-three the town board of any town which is to be in the first class may adopt a resolution that the number of council members to be elected shall be reduced from four to two, which resolution shall be subject to referendum as herein provided. Within four days after the adoption of any such resolution, the town clerk shall cause copies thereof to be posted in ten public places of the town, with a statement of the date of its adoption. Within fourteen days after the adoption of such resolution, a petition may be filed requiring that such resolution be submitted to the electors of the town, for their approval. The form of the question to be submitted thereon shall be "Shall the resolution of the town board of the town of, that the number of council members to be elected be reduced from four to two, be approved?" If no such resolution shall have been adopted within the time above provided, a petition may be filed not later than June twenty-nine, nineteen hundred thirty-three, requiring the submission to such electors of the proposition "Shall the resolution of the town board of the town of

....., that the number of council members to be elected be reduced from four to two, be approved?" A petition for any of the above propositions shall be filed with the town clerk and shall be signed and duly acknowledged by at least one hundred electors of the town. The question or proposition for which the petition shall have been filed shall be submitted by the town board at a special town meeting to be held at a time, not later than August first, nineteen hundred thirty-three and at such place or places in the town as may be fixed by the town board. Notice of the meeting shall be given, such meeting held and the votes canvassed and results certified and returned in the manner provided by the provisions of the town law relating to special town meetings, as in force immediately prior to the taking effect of this section. Every elector of the town shall be entitled to vote at such meeting. If the town board shall have adopted such a resolution and no petition shall have been filed, within the time above provided, for a referendum thereon, or if a majority of the votes cast on any proposition or question submitted as herein provided be in the affirmative, such town shall have only two town council members and party nominations for such offices made, and designating petitions filed and two town council members shall be elected at the biennial town meeting in the year nineteen hundred thirty-three, one for a term of two years and one for a term of four years and thereafter at each biennial town election in such town there shall be elected one town council member for a term of four years, in the same manner as other elective town officers in such town.

4. The next biennial town meeting and election of town officers in every town of the state shall be held on the first Tuesday after the first Monday in November in the year nineteen hundred thirty-three. It shall be conducted by the officers conducting the general election, and be held at the same places and during the same hours as such election; and the laws governing town meetings held at the time of the general election shall apply. The town officers to be elected thereat shall be those and only those elective town officers of a town of the class to which the town shall belong, under the provisions of this chapter, on January first, nineteen hundred thirty-four. They shall be so elected for the terms prescribed by this chapter, and such terms shall begin on

such first day of January, nineteen hundred thirty-four, except that the terms of collectors shall begin on the day following such election. Nothing herein, however, shall be construed to require the appointment of three assessors in a town of the first class nor the election of three assessors in a town of the second class, if on or before June first, nineteen hundred thirty-three, such town shall have reduced the number of its assessors from three to one, pursuant to the provisions of chapter four hundred seventy-eight of the laws of nineteen hundred twenty-five, and in such a town no assessor shall be elected at the biennial town meeting in the year nineteen hundred thirty-three. Nothing herein, however, shall be construed to require the election of a superintendent of highways in a town which shall have adopted a proposition that thereafter such town superintendent shall be appointed by the town board, pursuant to the provisions of section forty-one of the highway law, and in such town no superintendent of highways shall be elected at the biennial town meeting in the year nineteen hundred thirty-three. The provisions of this subdivision shall not apply to towns in the county of Broome.

5. In a town which is to be in the first class, but one justice of the peace shall be elected for a full term at such biennial town meeting for the year nineteen hundred thirty-three, and but one for a full term at each biennial town election thereafter. The town board of any such town, however, may adopt a resolution on or before June fifteenth, nineteen hundred thirty-three, determining that no justice of the peace shall be elected at the biennial town meeting for the year nineteen hundred thirty-three. If the town board shall adopt such a resolution within the time specified, no justice of the peace shall be elected at the biennial town meeting of such town for the year nineteen hundred thirty-three, and two justices of the peace shall be elected for a full term each at the biennial town election in the year nineteen hundred thirty-five and two justices of the peace shall be elected at every second biennial town election held thereafter. No provision of this chapter shall be construed to abridge the term of a justice of the peace heretofore elected in any town of the first class. Not later than August first, nineteen hundred thirty-three, the town board of any town which is to be in the first class and which shall have a population of thirty-five

thousand or more, according to the latest federal census or state enumeration, may adopt a resolution determining that such town shall have four justices of the peace. If the town board shall have adopted such a resolution, such town shall have four justices of the peace and party nominations for such offices shall be made and designating petitions may be filed and two justices of the peace shall be elected at the biennial town meeting in the year nineteen hundred thirty-three and at each biennial town election thereafter, in the same manner as other elective town officers in such town.

5-a. 1. At the biennial town election to be held on the seventh day of November, nineteen hundred thirty-nine, and at each biennial town election held thereafter in each town of the second class, except as otherwise provided herein, there shall be elected one justice of the peace for the full term prescribed by law and one town council member for a term of four years to begin on the first day of January next succeeding the election at which they were elected, and party nominations for such offices shall be made and designating petitions may be filed and such officers shall be elected in the same manner as other elective officers in such town. During the period from January first, nineteen hundred forty until January first, nineteen hundred forty-two, the supervisor, the three justices of the peace and the town council member of such town shall constitute the town board thereof. On the first day of January, nineteen hundred forty-two and thereafter, the supervisor, the two justices of the peace and the two town council members shall constitute such town board.

2. At the biennial town election to be held in the year nineteen hundred forty in each town in the county of Broome and at each biennial town election held in such towns thereafter, there shall be elected one justice of the peace for the full term prescribed by law and one town council member for a term of four years to begin on the first day of January next succeeding the election at which they were elected, and party nominations for such offices shall be made and designating petitions may be filed and such officers shall be elected in the same manner as other elective town officers in such town. During the period from January first, nineteen hundred forty-one until January first,

nineteen hundred forty-three, the supervisor, the three justices of the peace and the town council member of such town shall constitute the town board thereof. On the first day of January, nineteen hundred forty-three and thereafter, the supervisor, the two justices of the peace and the two town council members shall constitute such town board.

3. The provisions of this subdivision shall not apply to a town having less than three hundred inhabitants according to the latest federal census and having a taxable property valuation of less than one hundred thousand dollars according to the latest assessment roll.

4. The provisions of this subdivision shall not apply to a town having more than four justices of the peace pursuant to law.

5. Notwithstanding the provisions of paragraph one of this subdivision, the town board of any town required thereby to elect one justice of peace and one town council member at the biennial election to be held on the seventh day of November, nineteen hundred thirty-nine, may adopt a resolution on or before but not later than the first day of July, nineteen hundred thirty-nine, determining that there shall be elected at the biennial town election of nineteen hundred thirty-nine, two justices of peace for the full term prescribed by law but no town council member. If the town board shall adopt such a resolution, the town clerk shall cause a certified copy thereof to be filed in the office of the board of elections of said county on or before the tenth day of July, nineteen hundred thirty-nine, and party nominations for the offices of justice of peace shall be made and designating petitions may be filed and two justices of peace shall be elected at said biennial town election of nineteen hundred thirty-nine, in the same manner as other elective town officers in such town.

In any such town in which two justices of peace shall be so elected at the biennial town election held in the year nineteen hundred thirty-nine, there shall be elected at the biennial town election held in the year nineteen hundred forty-one and at every biennial town election thereafter, one justice of peace and one town council member for the terms and in the manner prescribed in said paragraph one of this

subdivision.

6. The town board of any town which shall have adopted a resolution pursuant to paragraph five of this subdivision, determining that two justices of peace shall be elected at the biennial town election to be held on the seventh day of November, nineteen hundred thirty-nine, may also adopt a resolution on or before but not later than the first day of July, nineteen hundred thirty-nine, determining that the following proposition shall be submitted to the electors of such town at said biennial town election of nineteen hundred thirty-nine, to wit: "Shall the number of justices of peace in this town be reduced from four to two by the election of one justice of peace and one town council member for terms of four years each at the biennial town elections to be held in the years nineteen hundred forty-one and nineteen hundred forty-three and at each biennial town election thereafter, and shall the town board of this town consist of the supervisor and such justices of peace and town council member?" The town board shall give notice of the submission of such proposition and such proposition shall be submitted in the manner provided in article six of this chapter for the submission of propositions at special or biennial town elections. The polls shall remain open during the hours fixed for the election of town officers. Every elector of the town qualified to vote at such election for town officers shall be entitled to vote upon the foregoing proposition. The votes upon such proposition shall be canvassed and certified to the town clerk in the manner provided in section eighty-three of this chapter. If a majority of the votes cast in such town upon such proposition shall be in the affirmative, there shall be elected at the biennial town election held in the year nineteen hundred forty-one and at every biennial town election thereafter, one justice of peace and one town council member for the terms and in the manner prescribed in paragraph one of this subdivision. If a majority of the votes cast in such town upon such proposition shall not be in the affirmative there shall be elected at the biennial town election held in the year nineteen hundred forty-one and at every biennial town election thereafter, two justices of peace for the full term prescribed by law, but no town council member.

7. Notwithstanding the provisions of paragraph two of this

subdivision, the town board of any town in the county of Broome required thereby to elect one justice of peace and one town council member at the biennial election to be held in the year nineteen hundred forty, may adopt a resolution on or before but not later than the first day of July, nineteen hundred forty, determining that there shall be elected at the biennial town election of nineteen hundred forty, two justices of peace for the full term prescribed by law but no town council member. If the town board shall adopt such a resolution, the town clerk shall cause a certified copy thereof to be filed in the office of the board of elections of said county on or before the tenth day of July, nineteen hundred forty, and party nominations for the offices of justice of peace shall be made and designating petitions may be filed and two justices of peace shall be elected at said biennial town election of nineteen hundred forty, in the same manner as other elective town officers in such town.

In any such town in which two justices of peace shall be so elected at the biennial town election held in the year nineteen hundred forty, there shall be elected at the biennial town election held in the year nineteen hundred forty-two and at every biennial town election thereafter, one justice of peace and one town council member for the terms and in the manner prescribed in paragraph two of this subdivision.

The town board of any town which shall have adopted a resolution pursuant to this paragraph, determining that two justices of peace shall be elected at the biennial town election to be held in the year nineteen hundred forty, may also adopt a resolution on or before but not later than the first day of July, nineteen hundred forty, determining that the following proposition shall be submitted to the electors of such town at said biennial town election of nineteen hundred forty, to wit: "Shall the number of justices of peace in this town be reduced from four to two by the election of one justice of peace and one town council member for terms of four years each at the biennial town elections to be held in the years nineteen hundred forty-two and nineteen hundred forty-four and at each biennial town election thereafter, and shall the town board of this town consist of the supervisor and such justices of peace and town council member or council members?" The town board shall give notice of

the submission of such proposition and such proposition shall be submitted in the manner provided in article six of this chapter for the submission of propositions at special or biennial town elections. The polls shall remain open during the hours fixed for the elections of town officers. Every elector of the town qualified to vote at such election for town officers shall be entitled to vote upon the foregoing proposition. The votes upon such proposition shall be canvassed and certified to the town clerk in the manner provided in section eighty-three of this chapter. If a majority of the votes cast in such town upon such proposition shall be in the affirmative, there shall be elected at the biennial town election held in the year nineteen hundred forty-two, and at every biennial town election thereafter, one justice of peace and one town council member for the terms and in the manner prescribed in paragraph two of this subdivision. If a majority of the votes cast in such town upon such proposition shall not be in the affirmative there shall be elected at the biennial town election in the year nineteen hundred forty-two and at every biennial town election thereafter, two justices of peace for the full term prescribed by law, but no town council member.

6. If the town board of any town, shall be required to submit to the qualified electors of the town more than one question or proposition pursuant to the provisions of any subdivision of this section, all of such questions or propositions shall be submitted at a special town meeting to be held at the same time, not later than August first, nineteen hundred thirty-three, at such place or places in the town, as may be fixed by the town board.

7. Nothing contained in this chapter shall be construed to require the election, in a town which is to belong in the second class, of two justices of the peace for full terms at such biennial town meeting in the year nineteen hundred thirty-three, if heretofore two justices of the peace shall have been elected for full terms to begin January first, nineteen hundred thirty-four.

8. In a town which is to belong in the second class, only four justices of the peace heretofore or hereafter elected for terms or parts

of terms expiring not earlier than December thirty-first, nineteen hundred thirty-five, or justices appointed or to be appointed or to be elected pursuant to law, to fill vacancies in their offices, shall be members of the town board.

9. The term of every elective town officer, other than justice of the peace, heretofore elected shall expire on the thirty-first day of December, nineteen hundred thirty-three, unless the office be one having a four year term and be one that is continued as an elective office, with a like term, after the first day of January, nineteen hundred thirty-four, and the officer was elected for a term expiring on or after the thirty-first day of December, nineteen hundred thirty-five, in which case the term of such officer, other than justice of the peace, shall expire on that day, except that collectors heretofore elected for a term expiring before the biennial town election in the year nineteen hundred thirty-five, shall expire on the day of the town meeting herein provided for. At the biennial town meeting or election held in the years nineteen hundred thirty-three or nineteen hundred thirty-five next preceding any such expiration, successors shall be elected for full terms, beginning on the first day of January following election, if the office continues to be elective. No provision of this chapter shall be construed to abridge the term of office of any town officer, except assessor, heretofore elected for a term of four years beginning on the first day of January, nineteen hundred thirty, pursuant to the provisions of chapter three hundred forty-six of the laws of nineteen hundred sixteen, and successors to such officers shall be elected for full terms of four years at the biennial town election to be held in the year nineteen hundred thirty-three and at every second biennial town election held thereafter. Nothing herein contained shall affect the provisions of section five of the public officers law. The provisions of this subdivision shall not apply to towns in the county of Broome.

9-a. Notwithstanding any inconsistent provision of this chapter, an assessor of any town of the first class in the county of Erie, in office on December thirty-first, nineteen hundred thirty-three, whose term of office for which he was elected has not expired shall continue in office for the term for which he was elected. In any such town not to exceed

two, assessors shall be appointed for terms of two years each commencing January first, nineteen hundred thirty-four, but no assessor shall be appointed to succeed a present incumbent of the office of assessor, except in case of a vacancy, until the expiration of his term.

10. Not later than June twenty-ninth, nineteen hundred thirty-three, a petition may be filed requiring the submission to the qualified electors of any sewer, water, park, refuse and garbage, or public dock district, in which there are district commissioners, of the proposition "shall the provisions of article thirteen of chapter (here insert the number of the chapter) of the laws of nineteen hundred thirty-two, entitled 'An act relating to towns, constituting chapter sixty-two of the consolidated laws' be made applicable to this district?" A petition for any of such purposes shall be filed with the town clerk, and shall be signed and duly acknowledged by owners of real property situate in such district owning in aggregate at least twenty-five per centum of all the real property within such district. The proposition for which the petition shall have been filed shall be submitted by the town board at a special town meeting to be held at a time not later than August first, nineteen hundred thirty-three, and at a place within such district, to be fixed by the town board. Notice of the meeting shall be given, such meeting held and the votes canvassed and result certified and returned in the manner provided by the provisions of the town law relating to special town meetings as in force immediately prior to the taking effect of this section. Every elector of the town who is a resident and the owner of property in such district assessed upon the last preceding town assessment roll shall be entitled to vote at such meeting. If a majority of the votes cast on any proposition submitted as herein provided be in the affirmative, the provisions of article thirteen of this chapter shall be applicable to such district and the affairs of such district shall be administered in the manner therein provided.

11. Nothing in this act shall affect or impair the provisions and requirements of articles five to fourteen, both inclusive, of the conservation law, nor affect, impair nor repeal chapter five hundred sixteen of the laws of nineteen hundred twenty-eight, as amended.

12. Joint water districts or water districts in two or more towns, heretofore created or established pursuant to the provisions of article thirteen of the town law, as the same existed prior to its repeal by this act, shall continue as now established and the officers therein named or referred to shall have all the powers and be subject to the duties specified by such article, to the same effect as though such article had not been repealed by this act. The water commissioners therein referred to may provide that a discount shall be allowed for the prompt payment of water rates within the time required by such commissioners for the payment thereof. The provisions of section one-hundred ninety-eight, subdivision twelve (b) of this chapter as to leasing of water storage and distribution facilities shall apply to joint water districts continued pursuant to this subdivision twelve.

13. Not later than June fifteenth, nineteen hundred thirty-three, the town board of any town containing a population of ten thousand or more as shown by the latest federal census, excepting towns in Broome and Suffolk counties, and of any other town which shall determine by any of the methods prescribed by subdivision one of this section to be a town of the first class, may adopt a resolution to establish the ward system for the election of council members for such town, which resolution shall be subjected to referendum as herein provided. Within four days after the adoption of such resolution, the town clerk shall cause copies thereof to be posted in ten public places in the town, with a statement of the date of its adoption. Within fourteen days after the adoption of such resolution, a petition may be filed requiring such resolution be submitted to the electors of the town, for their approval. The form of question to be submitted thereon shall be "Shall the resolution of the town board of the town of, establishing the ward system for the election of town council members, be approved?" If no such resolution shall have been adopted within the time above provided, a petition may be filed not later than June twenty-ninth, nineteen hundred thirty-three, requiring the submission to such electors of the proposition "Shall the ward system be established for the election of town council members?" A petition for any of the above purposes shall be filed with the town clerk, and shall be signed and duly acknowledged by at least one hundred electors of the town. The question or proposition

for which a petition shall have been filed shall be submitted by the town board at a special town meeting to be held at a time, not later than August first, nineteen hundred thirty-three, and at such place or places in the town as may be fixed by the town board. Notice of the election shall be given, such meeting held and the votes canvassed and result certified and returned in the manner provided by provisions of the town law relating to special town meetings as in force immediately prior to the taking effect of this section. Every elector of the town shall be entitled to vote at such meeting. If the town board shall have adopted such a resolution and no petition shall have been filed, within the time above provided, for a referendum thereon, or if a majority of the votes cast on any proposition or question submitted as herein provided be in the affirmative, the board of elections of the county in which such town is situate shall forthwith divide the town into four wards and fix the boundaries thereof. In so dividing the town into wards, no town election district shall be divided and no election district shall contain parts of two or more wards. So far as possible the division shall be so made that the number of votes in each ward shall be approximately equal. When the board of elections shall have finally determined the boundaries of the wards, the board shall cause a map of the town to be prepared showing in detail the location of each ward and the boundaries thereof. The original map so made shall be filed in the office of the town clerk and copies thereof shall be filed in the offices of the county clerk and the board of elections of the county. The ward system shall be deemed established after such filing is complete. Party nominations shall be made, designating petitions filed and one resident elector of each ward shall be elected as council member therefrom for a term of two years beginning on the first day of January next succeeding such election, at the biennial town meeting in the year nineteen hundred thirty-three, and biennially thereafter, in the same manner as other elective town officers in such town.

14. An existing law, other than a provision of the former town law hereby repealed, which confers a power or imposes a duty or obligation on a particular town or group of towns, or the towns of a particular county or counties, or an officer or officers thereof, or which provides for the election or appointment of additional officers, shall not be

affected nor impaired by this chapter. All provisions of this chapter, however, not inconsistent with a law specified in this section shall apply to any such town.

§ 342. When to take effect. The provisions of sections one hundred eighty-six and three hundred forty-one of this chapter shall take effect June first, nineteen hundred thirty-three. The provisions of sections one hundred ten to one hundred twenty-one, inclusive, of this chapter so far as the same pertain to the preparation of preliminary and annual estimates and public hearings thereon, the adoption of the annual estimate, annual appropriations, the levy of taxes for the year nineteen hundred thirty-four and the issuance and sale of bonds or certificates of indebtedness, pursuant to section one hundred twenty-one, shall take effect August fifteenth, nineteen hundred thirty-three in every town containing a population of ten thousand or more as shown by the decennial federal census of nineteen hundred thirty, excepting towns in the counties of Broome and Suffolk, in every town which shall have determined by any method prescribed in subdivision one of section three hundred forty-one of this chapter that such town is to be in the first class, excepting, however, towns in the county of Ontario and the towns to which the provisions of article six-a of the former town law repealed by this act, shall apply prior to August fifteenth, nineteen hundred thirty-three. The provisions of sections one hundred ninety to two hundred two, inclusive, and two hundred twenty to two hundred forty-six, inclusive, of this chapter shall take effect immediately. In all other respects this chapter shall take effect January first, nineteen hundred thirty-four.