

## ARTICLE II Additional Water Supply

### **§ 371-14. Board of Water Supply; duties; salary; term of office.**

The Mayor of the City of Albany shall appoint three (3) persons who shall be Commissioners for the purposes hereinafter specified. The persons to be appointed shall be public officers and shall constitute a board or commission to be known as the "Board of Water Supply of the City of Albany." Every member shall during his term of office be a resident of the City of Albany. Each Commissioner shall be entitled to receive a salary of five thousand dollars (\$5,000.) per year and shall hold no other municipal office. The Board shall have power to appoint a President from among its own members and to adopt a seal and bylaws regulating the transaction of its business. The Board shall also have power to appoint a Secretary, and such engineers, surveyors, draughtsmen, stenographers, clerks and employees as may be necessary whose compensation shall be fixed by the Board of Estimate and Apportionment of the City of Albany. The Board of Water Supply shall report to the Board of Estimate and Apportionment such appointments with the request that the salaries or compensation of such appointees be fixed. The Board of Water Supply shall have such further powers as may be requisite to the efficient performance of the duties imposed upon it by this article in addition to the powers herein specifically conferred. The members of the Board of Water Supply shall hold office for a period of five (5) years from the date of their appointment; provided, however, that thereafter the Mayor may appoint successors for one (1) or more successive terms of two (2) years each, and the life of such Board and the operation of this article are hereby extended to the time of the expiration of any such successive terms of such successors. All contracts and other papers to be executed pursuant to resolution adopted by the Board may be executed in the name of the Board, and under its seal and attested by the signature of its President or Secretary or any member of the Board duly authorized by resolution so to do. Every contract shall be approved by the Board of Estimate and Apportionment before the same shall become a valid and binding obligation of the City of Albany. Two (2) members shall constitute a quorum of said Board for the transaction of all business by the Board. The Corporation Counsel of the City of Albany shall be the attorney at law for, and legal adviser of, the Board, and shall, upon its request, either personally or through such of his assistants or other counsel as he may designate, furnish it with advice and aid, in a similar manner as he is required by law to do in the case of departments, boards and officers of the City of Albany. No member of said Board shall be removed except for incompetency or misconduct shown after a hearing upon due notice, upon stated charges.

### **§ 371-15. Board to ascertain sources for additional water; expenses from water rents.**

It shall be the duty of the Board of Water Supply to proceed with reasonable speed to ascertain what sources are most available, desirable and best for an additional supply of pure and wholesome water for the City of Albany. The Board shall cause to be made such surveys, maps, plans, specifications, estimates and investigations as it may deem proper in order to ascertain the facts as to said sources, and shall report to the Board of Estimate and Apportionment with recommendations as to what action should in its opinion be taken with reference thereto. It shall not be necessary that the project contemplated by this article shall be acted on by or under one (1) report or at one (1) time but it shall be lawful for said Board to report upon and consider the project in parts or sections from time to time as said Board may deem fit so that the City

may be able to obtain a supply of water from one (1) or more sources before the whole supply contemplated may be obtained. After the acquisition of such water supply and the completion of any of the work contemplated by this article, the Board of Water Supply shall have such control, care and management of the public lands, reservoirs, filter plants, aqueducts, rights-of-way, watercourses and drainage areas tributary thereto as may be conferred upon said Board by the Common Council of the City of Albany. After January 1, 1934, the expenses of the Board for salaries, personal service, maintenance and operation shall be paid out of the annual receipts for water rates collected by the City of Albany.

**§ 371-16. Boards of Estimate and Apportionment; powers and duties; maps; surveys; notice of hearing.**

The Board of Estimate and Apportionment upon receipt of said report or reports of the Board of Water Supply may adopt, modify or reject the whole or any part of the same and may require from said Board of Water Supply such further information as it shall deem expedient to enable it to act intelligently in the premises. In case of the modification or rejection of the recommendations in said report or reports or any part thereof by the Board of Estimate and Apportionment, the Board of Water Supply in like manner as aforesaid shall prepare and submit to the Board of Estimate and Apportionment a further report or reports, surveys, maps, plans, specifications, estimates or investigations and make such changes or modifications as shall seem proper to the Board of Estimate and Apportionment, and shall continue so to do under the direction of said Board of Estimate and Apportionment until a map, plan or plans covering the entire work contemplated by this article shall be approved and adopted by said Board of Estimate and Apportionment. Said map, plan or plans may be made and adopted in parts or sections from time to time and may be changed or modified either before or after adoption as the Board of Estimate and Apportionment may deem necessary for the more efficient carrying out of the provisions of this article. The Board of Water Supply prior to the presentation to and adoption by the Board of Estimate and Apportionment of such map, plan or plans or to a modification therein shall afford to all persons interested a reasonable opportunity to be heard respecting the same and shall give reasonable public notice of such hearing whereat testimony may be produced by the parties appearing in such manner as the Board of Water Supply may determine and each member of said Board is hereby authorized to administer oaths and to issue subpoenas in any proceeding pending before such Board under this article. Notice of such hearing shall be given in addition to the above provisions by mailing to the Chairman and Clerk of the Board of Supervisors of the county where the real estate to be acquired is situated a notice of such hearing at least eight (8) days before the time named in said notice. A final map, plan or plans or any part or section thereof approved and adopted by the Board of Estimate and Apportionment shall be executed in quadruplicate by the Secretary thereof, one (1) of which shall remain on file in the office of the Secretary of the Board of Water Supply, one (1) or a certified copy thereof shall be filed in the County Clerk's office or Register's office of each county in which any of the land affected thereby is situated, and one (1) copy or a certified copy thereof shall be filed with the Board of Estimate and Apportionment.

**§ 371-17. Authorized to enter upon land or water.**

The Board of Water Supply, its agents, engineers, surveyors and such other persons as may be necessary to enable it to perform its duties under this article are hereby authorized to enter upon any land or water for the purpose of making surveys, examinations or investigations and preparing

the maps, plans and reports contemplated by this article and for the purpose of posting any notices that may be required to be published in like manner.

**§ 371-18. Proceedings following approval and filing of final map and plans; filed in sections; rejections.**

After the approval, adoption and filing of a final map, plan or plans or of any part or section thereof described in § 371-16 of this article, the Board of Water Supply shall cause to be prepared and submitted to the Board of Estimate and Apportionment four (4) similar maps or plans of the proposed sites of the proposed dams, reservoirs, aqueducts, sluices, culverts, canals, pumping works, bridges, tunnels, blowoffs, ventilating shafts, filters and conduits and other works of construction and the appurtenances thereof. Upon these maps there shall be laid out and numbered the various parcels of real estate on, over or through which the same are to be constructed and maintained or which may be necessary for the prosecution of the work authorized by this article. On said maps the natural and artificial division lines existing on the surface of the soil at the time of the survey shall be delineated and there shall be plainly indicated thereon of which parcels the fee and over or through which parcels the right to use and occupy the same in perpetuity is to be required. The Board of Estimate and Apportionment may adopt, modify or reject said maps in whole or in part and require others to be made instead thereof. Said maps may be made and filed in sections. One (1) or more sections may be determined before the maps of the whole construction are completed. Said sections shall be determined and decided upon previous to the appointment of the Commissioners of Appraisal as hereinafter provided for and shall be so determined that one (1) set of Commissioners of Appraisal shall not be appointed upon a section covering more property than can reasonably be passed upon and awards made by said Commissioners of Appraisal within the limits of six (6) months from the time of the filing of the oaths, as hereinafter provided. The proceedings hereinafter authorized may in like manner be taken separately in reference to one (1) or more of such sections before the maps of the whole are filed. The work upon one (1) or more of such sections may be begun before the maps of the remaining sections are filed. In case of such rejection the Board of Water Supply shall in like manner aforesaid prepare and submit others until maps shall be approved by the Board of Estimate and Apportionment covering the entire area required for the construction, maintenance and operation of such aqueducts, dams, reservoirs, culverts, sluices, canals, bridges, tunnels, pumping works, blowoffs, shafts, filters, conduits and appurtenances according to the maps, plan or plans, theretofore by said Board of Estimate and Apportionment approved. The maps when adopted by said Board of Estimate and Apportionment shall be transmitted to the Corporation Counsel with the approval written thereon, signed by the Secretary of the Board of Estimate and Apportionment.

**§ 371-19. File maps in office of County Clerk.**

The Corporation Counsel of the City of Albany shall cause one (1) of said maps described in a previous section or a certified copy thereof to be filed in the office of the Clerk of each county in which any real estate laid out on said map shall be located, except that in any county in which there is a Register's office said map shall be filed therein instead of in the office of the County Clerk.

**§ 371-20. Application for appointment of Commissioners of Appraisal; contents of petition.**

After said map shall have been filed as provided for in the preceding section the Corporation

Counsel for and on behalf of the City of Albany shall upon first giving the notice required in the next section of this article, apply to the Supreme Court at any special term thereof to be held in the judicial district in which the lands or some part thereof shown on said maps, and the title to which it is proposed to acquire in the proceeding thus instituted, is situated, for the appointment of Commissioners of Appraisal. Upon such application he shall present to the Court a petition signed and verified by the Chairman or by the Secretary of the Board of Water Supply, setting forth the action theretofore taken by the Board of Water Supply and by the Board of Estimate and Apportionment and the filing of such maps, and paying for the appointment of Commissioners of Appraisal. Such petition shall contain a general description of all the real estate to, in or over which any title, interest, right or easement is sought to be acquired for said City for the purpose of this article, each parcel being more particularly described by a reference to the number of said parcel as given on said map or maps and title, interest or easement sought to be acquired to, in or over such parcel, whether a fee or otherwise shall be stated in the petition. Nothing herein contained shall require that such application be made, or if said proceeding has been commenced that it be continued, where the Board of Water Supply has acquired title for said City to all the real estate as shown on said map required for any particular part or section of the work.

#### **§ 371-21. Publication; contents of.**

The Corporation Counsel shall give notice in the two (2) official newspapers of the City of Albany and in one (1) newspaper published in each county other than the County of Albany in which any real estate laid out on said maps may be located and which it is proposed to acquire in the proceeding, of his intention to make application to said Court for the appointment of Commissioners of Appraisal, which notice shall specify the time and place of such application, shall briefly state the objects of the application and shall describe the real estate sought to be taken or affected. A statement of the boundaries of the dams, reservoirs, sluices, culverts, canals, pumping works, bridges, tunnels, blowoffs, filters and ventilating shafts and of the route of the tunnels, aqueducts and conduits by courses and distances and of the greatest and least width of its tract with separate enumerations of numbers of the parcels to be taken in fee and of the numbers of the parcels in which easement is to be acquired with reference to the dates and places of filing said maps shall be sufficient description of the real estate sought to be so taken or affected. Such notice shall be so published in each of said newspapers once in each week for three (3) weeks immediately previous to the presentation of such petition.

#### **§ 371-22. Order for appointment of Commissioners.**

At the time and place mentioned in said notice, unless the Court shall adjourn such application to a subsequent date, and in that event, at the time to which the same may be adjourned, the Court upon due proof to its satisfaction of the publication aforesaid and upon the filing of said petition shall make an order for the appointment of three (3) disinterested and competent freeholders, at least one (1) of whom shall reside in the County of Albany, and at least one (1) of whom shall reside in the county or one (1) of the counties in which said real estate shall be situated, as Commissioners of Appraisal to ascertain and appraise the compensation to be made to the owners and all persons interested in the real estate laid down on said maps as proposed to be taken or affected for the purposes indicated in this article. Such order shall fix the time and place for the first meeting of said Commissioners.



**§ 371-23. Oath of office of Commissioners; where filed.**

Said Commissioners shall take and subscribe the constitutional oath of office and shall forthwith file the same in the office of the Clerk of Albany County and a certified copy or copies thereof in the office of the Clerk of the county in which the land or any part thereof is situated, and in the Register's office in any county in which there is a Register's office and in which is situated any of the real estate sought to be taken or affected by the proceeding.

**§ 371-24. When City acquires fee to parcels of land; possession and entry; removal of buildings.**

On filing the oath in the manner provided in the previous section the City of Albany shall be and become seized in fee of all those parcels of real estate which are on the maps in fifth section<sup>1</sup> referred to described as parcels of which it has been determined that a fee should be acquired and may immediately at any time or times thereafter take possession of the same or any part thereof, without any suit or proceeding at law for that purpose; provided, however, that before the City of Albany takes possession of the same it shall pay to the respective owner or owners of each parcel of real estate a sum of money equal to one-half (1/2) the assessed valuation of said property as the same appears upon the last assessment roll of the town or city in which the same is situated filed prior to the taking effect of this article. Deposit of the money to the credit of or payable to the order of the owner pursuant to the direction of the Court shall be deemed a payment within the provisions of this section, and thereupon the Board of Water Supply of the City of Albany, or any person or persons acting under its authority may enter upon and use and occupy in perpetuity all the parcels of real estate described in said map for the purpose of constructing and maintaining on, in, under or over the same, said aqueducts, dams and reservoirs with said blowoffs, sluices, culverts, bridges, tunnels, ventilating shafts, filters, conduits and other appurtenances; provided, however, that no building or improvement shall be removed or disturbed within four (4) months from the date of the filing of the oaths of the Commissioners unless notice is given to the owner of ten (10) days or to his attorney of the intention to make such removal and offering him an opportunity to examine the property with the Commissioners and such witnesses as he may desire. If the owner of the property cannot be found with due diligence and there is no attorney representing said property or parcel, before removing, disturbing or destroying any of the buildings or the improvements the representative of the Board of Water Supply or the Corporation Counsel shall cause measurements to be made of the building and photographs of the exterior views thereof which measurements and photographs shall be at the disposition of the claimants or their attorneys in case such claimants or attorneys should appear and demand the same before the case is tried.

**§ 371-25. Commissioners of Appraisal; powers and authority; compensation.**

Any one of said Commissioners of Appraisal may issue subpoenas and administer oaths to witnesses and they or any of them in the absence of the others may adjourn the proceedings from time to time in their discretion or they shall continue to meet from time to time as may be necessary to hear, consider, and determine upon all claims which may be presented to them under the provisions of this article. In case of the death, resignation, refusal or neglect to serve of any Commissioner of Appraisal the remaining Commissioner or Commissioners shall upon

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1. Editor's Note: See § 371-18.

ten (10) days' notice to be given by advertisement in the newspapers designated as herein before provided apply to the Supreme Court at a special term thereof to be held in the judicial district in which the land or any part thereof, the title to which is to be acquired in the proceeding is situated for the appointment of one (1) or more Commissioners to fill the vacancy or vacancies so occasioned. In case of death, resignation or refusal to serve of all the Commissioners of Appraisal the Corporation Counsel shall on giving the notice required in this section apply to said Court for the appointment of other Commissioners of Appraisal. The Corporation Counsel shall furnish the Commissioners of Appraisal a copy of the maps hereinbefore provided for. The Commissioners of Appraisal shall view the real estate laid down on said maps and shall hear the proofs and allegations of any owner, lessee or other person or corporation in any way entitled to or interested in said real estate or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the City of Albany. They shall reduce the testimony, if any taken, to writing, and after the testimony is closed they or a majority of them all having considered the same shall without unnecessary delay ascertain and determine the just and equitable compensation which ought justly to be paid by the City of Albany to the owners or the persons or corporations interested in the real estate sought to be acquired or affected by said proceedings, including just and equitable compensation to the owner of any leasehold taken or affected in the proceeding. Said Commissioners of Appraisal shall make reports of their proceedings to the Supreme Court as hereinafter provided with minutes of testimony taken by them, if any, and they shall be entitled to the payment hereinafter provided for their services and expenses to be paid from the fund hereinafter provided.

**§ 371-26. Report; contents of; recommendations of allowances.**

Said Commissioners shall prepare a report and such copies thereof as may be required to which shall be respectively annexed a copy of the map or maps referred to in the previous sections of this article. Said reports shall contain a brief description of the parcels of real estate taken or affected with reference to the map or maps as shown, the location and boundaries of each parcel; a statement of the sum estimated and determined upon by them as just and equitable compensation to be made by the City to the owners or persons entitled to or interested in each parcel so taken or as to which any right, title, interest, privilege or easement is taken, acquired or extinguished; and a statement of the respective owners or persons or corporations entitled thereto or interested therein, but in all and each and every case and cases where the owners and parties interested or their respective estates and interests are unknown or not fully known to the Commissioners it shall be sufficient for them to set forth and state in general terms the respective sums to be allowed and paid to the owners or parties interested therein generally without specifying the name of estates or interests of such owners or parties interested or any or either of them. The Commissioners of Appraisal may also recommend such sums if any as shall seem to them proper to be allowed to parties appearing in the proceedings as expenses and disbursements, including reasonable compensation for witnesses. The Commissioners of Appraisal may also determine and recommend what sums, if any, ought to be paid to the general or special guardian of an infant, idiot, or person of unsound mind or to an attorney appointed by the Court to attend to the interest of any known owner or party in interest who has not appeared in the proceeding for expenses or counsel fees.

**§ 371-27. Report; time and place of filing.**

Said report signed by said Commissioners or a majority of them shall be filed not more than six (6) months after the date of the filing of the oaths of the Commissioners in the office of a Clerk of a county in which the real estate sought to be acquired may be situated and in case a part of the real estate is in another county a duplicate report or certified copy thereof shall be filed in the office of the Clerk of such other county; provided, however, that the Supreme Court upon application and immediate cause shown therefor may extend the time for filing of said report beyond six (6) months and for an additional period not exceeding six (6) months. The Commissioners of Appraisal shall notify the Corporation Counsel immediately upon the filing of a report.

**§ 371-28. Notice of presentation for confirmation; contents; published.**

The Corporation Counsel within thirty (30) days after receiving notice of such filing shall give notice that said report will be presented for confirmation to the Supreme Court at a special term thereof to be held in the judicial district in which the land or a part thereof is situated at the time and place to be specified in said notice. Said notice shall contain a statement of the time and place of the filing of the report and of the copy or copies thereof and shall be published in each of the newspapers referred to previously in this article at least once in each week for three (3) weeks immediately prior to the presentation of such report for confirmation.

**§ 371-29. Proceedings on application for confirmation; contents.**

The application for the confirmation of the report shall be made to the Supreme Court at a special term thereof held in the judicial district in which the land or some part thereof is situated. Upon the hearing of the application for the confirmation thereof said Court may confirm such report or may in its discretion order that a report or any portion thereof affecting one (1) or more parcels be referred to the same Commission or a new commission for a new hearing and make an order containing a recital of the substance of the proceedings in the matter of the appraisal with a general description of the real estate appraised and for which compensation is to be made; and shall also direct to whom the money is to be paid or in what bank or trust company and in what manner it shall be deposited by the Comptroller of the City of Albany. Such report when so confirmed shall (except in case of an appeal, as provided in this article) be final and conclusive as well upon the City of Albany as upon owners and all persons interested in or entitled to said real estate; and also upon all other persons whomsoever.

**§ 371-30. Payment of awards; action to recover.**

The City of Albany shall within three (3) calendar months after the confirmation of the report of the Commissioners of Appraisal pay to the respective owners and bodies politic or corporate mentioned or referred to in said report in whose favor any sum or sums of money shall be estimated and reported by said Commissioners of Appraisal the respective sum or sums so estimated and reported in their favor respectively with lawful interest thereon from the date of filing the oath and certified copies thereof as by this article required, deducting therefrom all sums of money paid on account thereof as provided in section eleven<sup>2</sup> of this article. And in case of neglect or default in the payment of the same and within the time aforesaid the respective person

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2. Editor's Note: See § 371-24.

or persons or bodies politic or corporate in whose favor the same shall be so reported and after application is made to the Comptroller of the City of Albany for payment thereof may sue for and recover the same with lawful interest as aforesaid in any court having cognizance thereof.

**§ 371-31. Payment of awards to minors; incompetents.**

Whenever the owner or owners, person or persons interested in any real estate taken or affected in such proceeding or in whose favor any such sum or sums or compensation shall be so reported shall be under the age of twenty-one (21) years, of unsound mind or absent from the State of New York, and also in all cases where the name or names of the owner or owners, person or persons interested in any such real estate shall not be set forth or mentioned in said report or where said owner or owners, person or persons being named therein cannot upon diligent inquiry be found or where there are divers or conflicting claims to the moneys awarded as compensation it shall be lawful for the City of Albany to pay the sum or sums mentioned in said report payable to such owner or owners, person or persons respectively with interest aforesaid into such bank or trust company as the Court may in order of confirmation direct to the credit of such owner or owners, person or persons, and such payments shall be as valid and effectual in all respects as if made to said owner or owners, person or persons interested therein respectively, themselves, according to their just rights.

**§ 371-32. Claims for compensation; when to be presented.**

Every owner or person in any way interested in any real estate taken or entered upon and used and occupied for the purposes contemplated by this article and any owner or person interested in real estate contiguous thereto and which may be affected by the construction and maintenance of said aqueducts, dams, reservoirs, sluices, canals, culverts, pumping works, bridges, tunnels, blowoffs, ventilating shafts, conduits and appurtenances whether such contiguous real estate is shown on the maps or not, if he intends to make a claim for compensation for such taking, entering upon, using or occupying, shall within one (1) year after the appointment of the Commissioners of Appraisal exhibit to said Commissioners a statement of his claim and shall thereupon be entitled to offer testimony and to be heard before them touching such claim and the compensation proper to be made to him and to have a determination made by such Commissioners of Appraisal as to the amount of such compensation. Every person neglecting or refusing to present such claim within said time shall be deemed to have surrendered his title or interest in such real estate or his claim for damages thereto except as far as he may be entitled as such owner or person interested to the whole or a part of the sum of money awarded by the Commissioners of Appraisal as a just and equitable compensation for taking, using and occupying or as damages for affecting the real estate owned by said person or in which said person is interested.

**§ 371-33. City protected in payment of compensation.**

Payment of the compensation awarded by said Commissioners of Appraisal to the persons named in their report (if not infants or persons of unsound minds) shall, in the absence of notice to the City of Albany or other claimants to such award, protect the City of Albany.

**§ 371-34. Appeal from confirmation of report.**

Within twenty (20) days after notice of the confirmation of the report of the Commissioners of

Appraisal as heretofore provided, either party may appeal by notice in writing to the other party to the Appellate Division of the Supreme Court. Such appeal shall be heard on due notice thereof being given according to the rules and practice of said Court. On the hearing of such appeal the Court may direct a new appraisal and determination of any question passed upon by the same or new Commissioners of Appraisal, and from any determination of the Appellate Division either party may take an appeal to the Court of Appeals. In case of a new appraisal the second report shall be final and conclusive on all parties and persons interested. If the amount of compensation to be paid by the City is increased by the second report, the difference shall be paid by the Comptroller of the City of Albany to the parties entitled to the same, or shall be deposited as the Court may direct; and if the amount is diminished, the difference shall be refunded to the City of Albany by the party to whom the same may have been paid; the judgment therefor may be rendered by the Court on the filing of the second report against the party liable to pay the same. But the taking of an appeal by any person or persons or body politic or corporate shall not operate to stay the proceedings under this article except as to the compensation paid for the particular parcel of real estate with which said appeal is concerned. Such an appeal shall be heard upon the evidence taken before the Commissioners and any affidavits as to irregularities, and such appeals may be taken without security thereon.

**§ 371-35. Court may amend proceedings; remove and appoint Commissioner.**

The Supreme Court of the judicial district in which the real estate or any part thereof is situated shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this article as may be necessary, or to cause other property to be included therein, and to direct such further notice to be given to any party in interest as it deems proper; and also to appoint other Commissioners in place of any one who shall die or refuse or neglect to serve or be incapable of serving or be removed. If in any particular it shall at any time be found necessary to amend any pleading, proceeding, or to supply any defect therein arising in the course of any special proceeding authorized by this article the same may be amended or supplied in such manner as may be directed by the Supreme Court, which is hereby authorized to make such amendment or correction.

**§ 371-36. Acquisition of land by agreement; land owned by state or municipality.**

The Board of Water Supply with the aid of the Corporation Counsel, subject to the approval of the Board of Estimate and Apportionment, of the City of Albany, may agree with the owners and persons interested in any real estate laid down on said maps as to the amount of compensation to be paid to such owners or persons interested for the taking or using and occupying such real estate. In case any such real estate shall be owned, occupied or enjoyed by the people or this state or by any county, town, village, or school district within this state such rights, titles, interests or properties may be paid for upon agreement respectively with the Commissioners of the Land Office or other duly constituted board or body acting for the people of the State of New York, with a Chairman and a majority in number of the Board of Supervisors of any county acting for such county and with the Supervisor and Commissioner of Highways of any town acting for such town, with the Mayor and a majority in number of the Trustees of any village acting for such village, and with the Trustees of any school district acting for such district. The Commissioner of the Land Office or other board or officer constituted to act shall have power to grant to said City any real estate belonging to the people of this state which may be required for the purposes contemplated

by this article on such terms as may be agreed between them and the City of Albany; and if any real estate of any county, town, village or school district is required by the City of Albany for the purposes of this article the majority of the Board of Supervisors acting for such county or the Supervisors of any such town with the Commissioners of Highways therein acting for such town or the majority of the Trustees of such village acting for such village or the Trustees of any school district acting for such district may grant or surrender such real estate for such compensation as may be agreed upon between such officers, respectively, and the City of Albany.

**§ 371-37. Real estate; defined; substitution of; expense of location change; time to complete work.**

The term "real estate" as used in this article shall be construed to signify and embrace all uplands, land under water, the water of any lake, pond or stream, all water rights or privileges and any and all easements and every estate, interest, and right, legal and equitable, in land or water, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages to said real estate. It shall also be construed to include all real estate (as the term is heretofore defined) heretofore or hereafter acquired or used for railroad, highway or other public purposes, provided that the persons or corporations owning said real estate or claiming interest therein shall be allowed the perpetual use for such purposes of the same or such other real estate to be acquired for the purposes of this article as will afford a practical route or location for such railroad, highway or other public purpose, and in the case of a railroad, commensurate with and adapted to its needs; and provided also that such persons or corporations shall not directly or indirectly be subject to expenses, loss or damage by reason of changing such route or location but that such expense, loss or damage shall be borne by the City of Albany. In case any real estate so acquired or used for public purposes is sought to be taken or affected for the purposes contemplated by this article, there shall be designated upon the maps heretofore referred to and there shall be described in the petition hereinbefore mentioned such portion of the other real estate shown on said maps and described in said petition as it is proposed to substitute in the place of the real estate then used for such railroad, highway or other public purpose. The Commissioners of Appraisal in determining the compensation to be made to the persons or corporations owning said real estate or claiming interest therein shall include in the amount of such compensation such sums as shall be sufficient to defray the expense of making such change of route and location and of building such railroad or highway. Said Commissioners of Appraisal shall suggest in their report and the Court in its order confirming such report shall determine, subject to a review by the Appellate Division, what reasonable time after payment of the awards to said persons or corporations shall be sufficient within which to complete the work of making such change and neither the City of Albany nor the Board of Water Supply shall be entitled to take possession or interfere with the use for the aforesaid purposes of such real estate before the expiration of such time. This time may be subsequently extended by the Court (subject to a review as aforesaid) upon a sufficient cause shown.

**§ 371-38. Forms of contract and specifications.**

The Board of Water Supply shall from time to time as it may determine prepare and submit to the Corporation Counsel forms of contract and specifications for the doing of the work and the furnishing of the material required to be done and furnished or for the doing of such parts of said work and the furnishing of such parts of said materials as it may from time to time determine.

The form of contract, specifications and bonds for the faithful performance shall be subject to the approval as to form by the Corporation Counsel.

**§ 371-39. Advertisement for proposals for doing work.**

When the form of any contract with the specifications and the form of bond for the performance thereof shall have been approved as provided in the last section the Board of Water Supply shall advertise for sealed bids or for proposals for the doing of work or the furnishing of the materials called for in such approved form of contract; said advertisement shall be published in the two (2) official newspapers of the City of Albany for at least five (5) days consecutively before the date on which bids shall be received.

**§ 371-40. Presentation of bids; certified check.**

All bids or proposals shall be enclosed in a sealed envelope and delivered to the Secretary of the Board of Water Supply and each such bid or proposal shall be accompanied by a certified check upon a solvent bank or trust company to the order of the Treasurer of the City of Albany for an amount not less than five per centum (5%) of the amount of said bid. Such amount, however, need not in any case exceed fifty thousand dollars (\$50,000.).

**§ 371-41. Publicly open bids or proposals; selection and rejection.**

After the expiration of the time limited in the advertisement said bids or proposals shall be publicly opened by the Board of Water Supply and it may subject to the approval of the Board of Estimate and Apportionment select the bid or proposal, the acceptance of which will, in its judgment, best secure the efficient performance of the work. The Board may reject any or all of such bids. In case of rejection of all of said bids the Board of Water Supply shall readvertise said contract and shall receive and dispose of the bids tendered under such advertisement in the manner hereinbefore provided for.

**§ 371-42. Return and forfeiture of deposits.**

Within three (3) days after the decision as to who shall receive the contract the Treasurer shall return all the deposits made to the persons making the same except the deposit made by the bidder to whom the contract shall be awarded; and if the bidder to whom the contract is awarded shall refuse or neglect, within ten (10) days after due notice that the contract has been awarded, to execute the same and furnish the security required the amount of deposit made by him shall be forfeited to and be retained by said City as liquidated damages for such neglect or refusal and shall be paid into the general fund of the City, but if said bidder to whom the contract is awarded shall execute the contract and furnish said security within the time aforesaid the amount of his deposit shall be returned to him.

**§ 371-43. Contracts; execution and filing; supervision of work.**

The contracts when so awarded shall be executed in triplicate by the contractor or contractors on the one part and the Board of Water Supply, acting for the City of Albany, and with the approval of the Board of Estimate and Apportionment, on the other part. One (1) of said originals shall be delivered to the contractor, one (1) shall be filed in the office of the Comptroller of the City of

Albany, and one (1) shall be filed in the office of the Board of Estimate and Apportionment. The work and materials called for by said contract shall be done and furnished under the direction and supervision and subject to the inspection of the Board of Water Supply, its engineers, supervisors and inspectors.

**§ 371-44. Compensation of Commissioners, assistants, persons making surveys and aiding Corporation Counsel; payments due on contracts.**

The Commissioners of Appraisal appointed in pursuance to this article shall receive as compensation such fees and expenses as may be taxed by the Court upon notice to the Corporation Counsel who shall also furnish them with the necessary clerks, stenographers, surveyors and other employees. The fees of the Commissioners and salaries and compensation of their assistants or employees and their necessary traveling expenses and all other necessary expenses in and about the special proceeding provided in this article shall be paid by the Comptroller of the City of Albany out of the funds hereinafter provided. Such fees and expenses shall not be paid until after they have been taxed before a Justice of the Supreme Court in the judicial district in which the lands or some part thereof are situated upon eight (8) days' notice to the Corporation Counsel of the City of Albany. The salaries and compensation of the persons employed as provided for in this article to prepare the necessary surveys, plans and estimates and for other purposes, and to direct, supervise and inspect the work required to be done by the provisions of this article and such other expenses in and about the same as are not herein required to be under contracts let after competitive bidding, shall be paid by the Comptroller of the City of Albany on certification of the Board of Water Supply or such person or persons as it may designate. The compensation and expenses of such of his assistants or other counsel as the Corporation Counsel may designate to represent and aid him in the performance of his duties under this article shall also be paid out of funds hereinafter provided and upon the certificate of the Corporation Counsel who shall have power to appoint such assistants or other counsel and to fix their compensation. The various sums of money growing due from time to time under the terms of the several contracts made for the doing of the work and furnishing the material required by this article shall be paid by the Comptroller of the City of Albany on the certification of the Board of Water Supply and the approval of the Board of Estimate and Apportionment.

**§ 371-45. Provisions of expenditures; approval of Board of Estimate and Apportionment.**

It shall be lawful for the Common Council of the City of Albany with the approval of the Board of Estimate and Apportionment of said City to provide for the necessary expenses contemplated by this article, including such sums of money as shall be sufficient for the payment of the salaries of the Board of Water Supply, their subordinates, engineers and employees and for any real estate or for the extinguishment of any right, title or interest therein acquired and all damages appraised to persons interested therein together with all expenses necessarily incurred in surveying, locating and acquiring title to said real estate or in extinguishing claims for damages thereto, and also to pay for all construction work that may be contracted for and accomplished under this article and for all other expenses of any kind or nature whatever that may be legally incurred under the provisions of this article. For the purpose of providing funds to pay for the costs and expenses contemplated by this article the City of Albany is hereby authorized and empowered to issue bonds to an amount not exceeding in the aggregate the sum of twelve million dollars (\$12,000,000.). Such bonds may be issued in series and at such times and in such denominations



and shall draw interest at such rate not exceeding the legal rate of interest, and shall be payable at such times and at such places as the Common Council shall by ordinance determine; provided, however, that the time for the payment of such bonds shall not exceed forty (40) years, and provided further that the principal of said bonds of each series shall mature in equal annual installments commencing not more than ten (10) years from the date of issue thereof. The last installment of any of said bonds shall mature not more than forty (40) years from the date of issue thereof. The Common Council may by ordinance provide that such bonds be made payable out of water rents or water rates received by the City. If at the time of the issue of any bonds authorized by this article the indebtedness of said City of Albany, exclusive of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained or to be contained in the taxes for the year when such certificates or revenue bonds were issued and payable out of such taxes shall exceed ten per centum (10%) of the assessed valuation of the real estate of said City subject to taxation as shall appear by the assessment rolls of said City on the last assessment for state or county taxes prior to such issue, then the term of such bonds so to be issued shall not exceed twenty (20) years and a sinking fund shall be created on the issuing of said bonds for their redemption by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity.

**§ 371-46. Work done by contract; exceptions.**

All work hereby authorized to be done and all materials hereby authorized to be furnished involving an expenditure of one thousand dollars (\$1,000.) shall be procured by contract made in the manner required by and pursuant to the provisions of this article. The Board of Water Supply, however, with the approval of the Board of Estimate and Apportionment, may without contract cause such surveys to be made and such maps, plans and estimates to be prepared as shall in its opinion be necessary to carry out the provisions of this article and may appoint engineers and other persons to supervise and inspect all work hereby authorized to be done whose salaries and compensation shall be fixed by the Board of Estimate and Apportionment. The Board of Water Supply, with approval of the Board of Estimate and Apportionment, may procure any work to be done without contract not involving an expenditure of over five thousand dollars (\$5,000.), if such Board shall certify in its opinion it is for the public interest that such work shall be done and in such certificate shall state its reason therefor.

**§ 371-47. Construction of highways and bridges; police protection furnished.**

The City of Albany is hereby required to build and construct such highways and bridges as may be made necessary by the construction of any reservoir under this article and to maintain such additional highway bridges. It shall be the duty of the City of Albany to provide proper police protection to the inhabitants of the localities in which any work may be constructed under the authority of this article and during such period of construction against the acts or omissions of persons employed on such works and to that end the Board of Water Supply is hereby authorized to appoint a sufficient number of persons to adequately police said localities for said period. Said Board of Water Supply shall have power to remove such persons and to fix or change their compensation in its discretion; such compensation shall be paid upon certificate of the Board of Water Supply as part of the expenses authorized to be incurred by this article. The Board of Water Supply shall give to each person so appointed a certificate of appointment and a certified copy of such certificate of appointment shall be filed in the office of the Sheriff of each county in which

any work shall be in process of construction under this article and in which said person shall be authorized to perform his duties. Each of said persons so appointed shall be and have all the powers of a peace officer in the county where any work is being constructed under the authority of this article, and he shall at all times when on duty wear upon his clothing or have in his possession a suitable badge of authority which he shall at once exhibit to any person asking therefor. It shall be the special duty of the person so appointed to prevent breach of peace and unlawful depredation and to arrest and bring before the proper magistrates the persons employed on said work or found in the vicinity thereof who are guilty of offenses against the law or persons whom they may have reasonable cause to believe to be guilty of any such offenses.

**§ 371-48. Monthly financial reports.**

The Board of Water Supply shall in every calendar month file in the office of the Comptroller of the City of Albany an account of any expenses made by it or under its authority and of all liabilities incurred by it during the preceding month.

**§ 371-49. Protection of streams from pollution; compensation.**

The City of Albany or its representatives shall not enter upon any lands not taken in pursuance of this article for the purpose of preserving streams or watercourses from pollution or contamination or of moving or causing to be moved any buildings on the ground that the same may contaminate the water supply without making provision for just compensation therefor.

**§ 371-50. Real estate acquired taxable where situated.**

Real estate acquired under the provisions of this article shall be taxable in the counties and taxation districts in which said real estate is situated.

**§ 371-51. Sale of surplus water. [Amended 8-5-1996 by Ord. No. 17.71.96]**

Upon the acquisition of such water supply and the completion of the work contemplated by this article, the Board is hereby authorized to furnish to any municipality a supply of water for the use and purposes of such municipality, in such quantities and at such rates as determined by the Board. Any municipal corporation desiring to take and receive water under the provisions of this section shall make written application to the Board showing the place and manner in which it is proposed to make the necessary connections for the furnishing of such water; provided, however, that no greater quantity of water shall be taken by said municipal corporations than the proportionate quantity that is used by the City of Albany, the proportion being calculated according to the number of inhabitants respectively of said City and said municipal corporations as shown by the last preceding census of the United States. The Board may also contract with any corporation or individual outside the City to make connections with its aqueducts, conduits or pipe lines for the purpose of using water therefrom and fix the price and conditions therefor but shall not permit such use of water if thereby the supply of water for the City or its inhabitants shall be insufficient.

**§ 371-52. Damages; decrease in value of real estate or business; determined; claim.**

The owner of any real estate not taken by virtue of this article or the owner of any business established prior to the time that any land affecting the value of said business is acquired by the

City of Albany for the water supply contemplated by this article and situated in any county in which any of the aqueducts, dams, reservoirs, sluices, canals, culverts, pumping works, bridges, tunnels, blowoffs, ventilating shafts, conduits and appurtenances shall have been constructed, directly or indirectly decreased in value by reason of the acquiring of land by the City of Albany for the water supply contemplated by this article or by reason of the execution of any of the plans for said water supply under these provisions shall have a right to damages for such decrease in value. The Board of Water Supply with the approval of the Board of Estimate and Apportionment of the City of Albany may agree with such person as to the amount of such damages and if such agreement cannot be made, such damages, if any, shall be determined in the manner herein provided for the ascertaining and determining the value of real estate taken under the provisions of this article. The amount of such damages so agreed upon or so determined as aforesaid shall be payable and collectible in the same manner as herein provided in the case of awards made through the confirmation of the report of the Commissioners of Appraisal. Any claim made pursuant to this section must be made within one (1) year after such claims have accrued.

**§ 371-53. Superseding clause.**

Nothing in this article contained shall be deemed to limit the powers and jurisdiction of the Water Power and Control Commission of the State of New York.