

Appendix E

Article 42, New York State Executive Law



**NEW YORK STATE EXECUTIVE LAW  
ARTICLE 42  
WATERFRONT REVITALIZATION OF  
COASTAL AREAS AND INLAND WATERWAYS**

- 910 Legislative findings
- 911 Definitions
- 912 Declaration of policy
- 913 Functions; powers and duties
- 914 Coastal area boundary
- 915 Optional local government waterfront revitalization programs for coastal areas and inland waterways
- 915-b Water dependent uses
- 916 Benefits of approved waterfront revitalization programs
- 917 Technical assistance
- 918 Financial assistance for coastal areas
- 919 Coordination of state actions and programs
- 920 Data collection and inventory
- 921 Amendment of coastal zone management program
- 922 Comprehensive harbor management plans

**§910. Legislative findings**

The legislature hereby finds that New York state's coastal area and inland waterways are unique with a variety of natural, recreational, industrial, commercial, ecological, cultural, aesthetic and energy resources of statewide and national significance.

The resources of the state's coastal areas and inland waterways are increasingly subject to the pressures of population growth and economic development, which include requirements for industry, commerce, residential development, recreation and for the production of energy. These competing demands result in the loss of living marine resources and wildlife, the diminution of open space areas, shoreline erosion, permanent, adverse changes to ecological systems and a loss of economic opportunities.

The social and economic well-being and the general welfare of the people of the state are critically dependent upon the preservation, enhancement, protection, development and use of the natural and man-made resources of the state's coastal area and inland waterways.

The legislature further finds that it is in the interest of the people of the state that coordinated and comprehensive policy and planning for preservation, enhancement, protection, development and use of the state's coastal and inland waterway resources take place to insure the proper balance between natural resources and the need to accommodate the needs of population growth and economic development.

**§911. Definitions**

As used in this article, the following terms shall have the meaning ascribed to them, unless the context otherwise requires:

1. "Coastal area" shall mean (a) the state's coastal waters, and (b) the adjacent shorelands, including landlocked waters and subterranean waters, to the extent such coastal waters and adjacent lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, inter-tidal estuaries and erosion prone areas. The coastal area extends to the limit of the state's jurisdiction on the water side and inland only to encompass those shorelands, the uses of which have a direct and significant impact on the coastal waters. The coastal area boundaries are as shown on the coastal area map on file in the office of the secretary of state as required in section nine hundred fourteen of this article.

2. "Coastal area boundaries" shall mean the boundaries prepared by the secretary of state pursuant to section forty-seven of chapter four hundred sixty-four of the laws of nineteen hundred seventy-five.

3. "Coastal waters" means lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill von Kull and Arthur Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes.

4. "Inland waterways" shall mean (a) the state's major inland lakes consisting of lakes Big Tupper, Black, Canandaigua, Cayuga, Champlain, Chautauqua, Conesus, Cranberry, George, Great Sacandaga, Honoeeye, Indian, Keuka, Long, Oneida, Onondaga, Otisco, Otsego, Owasco, Raquette, Sacandaga, Saratoga, Schroon, Seneca, Skaneateles, and Upper Saranac; (b) the state's major rivers comprised of the Ausable, Black, Boquet, Chemung, Delaware, Genesee, Grasse, Hudson north of the federal dam at Troy, Indian, Mohawk, Oswegatchie, Racquette, Salmon, Saranac, Susquehanna and Tioughnioga rivers; (c) the Barge Canal System as defined in section two of article one of the canal law; and (d) the adjacent shorelands to the extent that such inland waters and adjacent lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs and erosion prone areas.

5. "State agency" means any department, bureau, commission, board, public authority or other agency of the state, including any public benefit corporation any member of which is appointed by the governor.

6. "Comprehensive harbor management plan" shall mean a plan to address the problems of conflict, congestion and competition for space in the use of harbors, surface waters and underwater lands of the state within a city, town or village or abounding a city, town or village to a distance of fifteen hundred feet from shore. A harbor management plan must consider regional needs and, where applicable, must consider the competing needs of commercial shipping and recreational boating, commercial and recreational fishing and shellfishing, aquaculture and waste management, mineral extraction, dredging, public access, recreation, habitat and other natural resource protection, water quality, open space, aesthetic values and common law riparian or littoral rights, and the public interest in such lands underwater.

7. "Water dependent use" means an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

## **§912. Declaration of policy**

It is hereby declared to be the public policy of the state of New York within the coastal areas and inland waterways:

1. To achieve a balance between economic development and preservation that will permit the beneficial use of coastal and inland waterway resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems.

2. To encourage the development and use of existing ports and small harbors including use and maintenance of viable existing infrastructures, and to reinforce their role as valuable components within the state's transportation and industrial network.

3. To conserve, protect and where appropriate promote commercial and recreational use of fish and wildlife resources and to conserve and protect fish and wildlife habitats identified by the department of environmental conservation as critical to the maintenance or re-establishment of species of fish or wildlife. Such protection shall include mitigation of the potential impact from adjacent land use or development.

4. To encourage and facilitate public access for recreational purposes.

5. To minimize damage to natural resources and property from flooding and erosion, including proper location of new land development, protection of beaches, dunes, barrier islands, bluffs and other critical coastal and inland waterway features and use of non-structural measures, whenever possible.

6. To encourage the restoration and revitalization of natural and manmade resources.

7. To encourage the location of land development in areas where infrastructure and public services are adequate.

8. To conserve and protect agricultural lands as valued natural and ecological resources which provide for open spaces, clean air sheds and aesthetic value as well as for agricultural use.

9. To assure consistency of state actions and, where appropriate, federal actions, with policies of the coastal area and inland waterways, and with accepted waterfront revitalization programs of the area defined or addressed by such programs.

10. To cooperate and coordinate with other states, the federal government and Canada to attain a consistent policy towards coastal and inland waterway management.

11. To encourage and assist local governments in the coastal area and inland waterways to use all their powers that can be applied to achieve these objectives.

12. To encourage and assist local governments in the coastal area and inland waterways to use all their powers that can be applied to achieve these objectives.

13. To facilitate the redevelopment of urban waterfronts.

14. To encourage local governments to enter into intermunicipal agreements to protect their shared environment and

improve their region's economic strength.

15. To encourage state agencies to provide technical and financial assistance for implementation of local waterfront revitalization programs.

16. To encourage local governments and state agencies to celebrate, protect and enhance the special places that made waterfronts distinct ecological systems and the preferred locations for people to live, work and recreate.

### **§913. Functions; powers and duties**

The secretary shall have the following functions, powers and duties:

1. To advise the governor and agencies of state government concerning planning, programs and policies for the achievement of wise use of the land and water resources of coastal areas and inland waterways, giving full consideration to ecological, cultural, historic, aesthetic values and the needs for economic development and to encourage public and private institutions to preserve, protect, enhance, develop and use coastal and inland waterway resources in a manner consistent with the purposes and policies of this article.

2. To evaluate and make recommendations on federal, state and local programs and legislation relating to coastal and inland waterway resources issues;

3. To review and approve acceptable waterfront revitalization programs as herein provided;

4. To review, evaluate and issue recommendations and opinions concerning programs and actions of state agencies which may have the potential to affect the policies and purposes of this article, including but not limited to, programs within the jurisdiction of the departments of state, agriculture and markets, environmental conservation, public service, commerce and transportation, the offices of energy and parks and recreation and the office of general services.

5. To enter into contracts with any person, firm, corporation, municipality or governmental agency;

6. To adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the secretary; and

7. To do all other things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article or as may from time to time be confined upon the secretary by the legislature of the state.

### **§914. Coastal area boundary**

1. The coastal area boundary is hereby adopted as part of this article as though fully incorporated herein. Such boundary delineates the coastal area, which shall be the area within which the coastal policies and purposes shall apply.

2. A representation of the coastal area boundary shall be on file in the office of the secretary. The secretary shall file with the clerk of each county and local government which has any portion of its jurisdiction within the boundaries of the coastal area, a copy of the representation of such affected portion of the coastal area boundary and a copy of the representation of the coastal area boundary of the affected portion of any adjacent municipality. The secretary shall provide a copy of the representation of the coastal area boundary to each state agency having jurisdiction over programs identified pursuant to this article. The secretary, on its own initiative or on petition submitted in such form or manner as the secretary may prescribe by rule or regulation, may amend the coastal area boundary to correct errors or make changes that are in furtherance of the policies and purposes of this article. All such changes shall be filed with the clerk of each county and local government affected thereby.

### **§915. Optional local government waterfront revitalization programs for coastal areas and inland waterways**

1. It is the intention of this article to offer the fullest possible support by the state and its agencies to those local governments that desire to revitalize their waterfronts. Accordingly, any local government or two or more local governments acting jointly which has any portion of its jurisdiction contiguous to the state's coastal waters or inland waterways and which desires to participate may submit a waterfront revitalization program to the secretary as herein provided.

2. The secretary may provide technical and financial assistance as provided in sections nine hundred seventeen and nine hundred eighteen to any local government for the preparation of a waterfront revitalization program for the purposes of this article.

3. A local government or two or more local governments acting jointly which intends to submit a waterfront revitalization program for the purposes of this article is strongly encouraged to consult, during its preparation, with other entities that may be affected by its program, including local governments, county and regional agencies, appropriate port authorities, community based groups and state and federal agencies. On request by the local government, the secretary

shall take appropriate action to facilitate such consultation.

4. The secretary shall prepare and distribute guidelines and regulations for local governments desiring to prepare, or cause to be prepared, a waterfront revitalization program (hereinafter referred to as the "program"). Such guidelines shall provide that the program will be consistent with the policies and purposes of this article generally and shall include, but not be limited to:

- a. Boundaries of the waterfront area;
- b. An inventory of natural and historic resources of the waterfront area to be protected;
- c. A statement of the goals and objectives of the program;
- d. Identification of the uses and projects, public and private, to be accommodated in the waterfront area;
- e. Description of proposed means for long-term management and maintenance of waterfront development and activities including organizational structures and responsibilities and appropriate land use controls;
- f. Description of necessary and appropriate state actions for successful implementation of the program; and
- g. Specification of the adequate authority and capability of the local government to implement the program.

5. The secretary shall approve any local government waterfront revitalization program as eligible for the benefits set forth in section nine hundred sixteen of this article if he finds that such program will be consistent with coastal policies and will achieve the waterfront revitalization purposes of this article. In making such determination, the secretary shall find that the program incorporates each of the following to an extent commensurate with the particular circumstances of that local government:

- a. The facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location, such as but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture.

- b. The increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking and picnicking.

- c. The promotion and preservation of scenic, historic, cultural and natural resources as community amenities and tourist designations.

- d. The strengthening of the economic position of the state's major ports and small harbors.

- e. The redevelopment of deteriorated or formerly developed waterfronts through the re-use of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions that have negative effects upon the waterfront area and adjacent neighborhoods, and appropriate new development.

- f. The application of local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites.

- g. The protection of sensitive ecological areas, including but not limited to dunes, tidal and freshwater wetlands, fish and wildlife habitats, and the protective capability of coastal land features. Such protection will assure that land use or development will not affect such areas.

- h. A statement identifying those elements of the program which can be implemented by the local government, unaided, and those that can only be implemented with the aid of other levels of government or other agencies. Such statement shall include those permit, license, certification or approval programs, grant, loan, subsidy or other funding assistance programs, facilities construction and planning programs which may affect the achievement of the waterfront revitalization program.

- i. The establishment of a comprehensive harbor management plan and the means for its implementation.

5-a. [Eff. upon approval U.S. secretary of commerce of revision to state coastal management program. See, L.2001, c. 454 legislation note below] Nothing herein shall preclude the secretary from approving a portion or component of a local waterfront revitalization program provided such portion or component constitutes a discrete and cohesive, yet comprehensive, treatment of the subject or subjects addressed, which may be related to environmental, social, regional growth management or economic considerations.

6. Before approving any such waterfront revitalization program, or any amendments thereto, as eligible for the benefits of this article, the secretary shall consult with potentially affected state and federal agencies; the secretary shall not approve any such program if he finds after such consultation that there is a conflict with any state or federal policies.

7. Where there is a conflict between a submitted waterfront revitalization program and any state or federal policy, at the request of the local government or the state or federal agency affected, the secretary shall attempt to reconcile and resolve the differences between the submitted program and such policies and shall meet with the local government and involved state and federal agencies to this end.

8. Subsequent to approval of the local program by the secretary, state agency actions shall be consistent to the maximum extent practicable with the local program. Provided, however, that nothing in this article shall be construed

to authorize or require the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

Where implementation of an approved local program depends upon the availability of other than local funds and program actions, the secretary shall meet with the involved state and federal agencies to explore the possibility of programming of such assistance including pre-permitting of sites for waterfront redevelopment, in a manner that would provide the maximum practicable assistance toward the implementation of the local program.

9. Before undertaking any action pursuant to any programs identified pursuant to paragraph (h) of subdivision five of section nine hundred fifteen of this article the affected state agency shall submit, through appropriate existing clearing house procedures including but not limited to the state environmental quality review law, information on the proposed action to local government. The local government shall identify potential conflicts and so notify the secretary. Upon notification of the conflict, the secretary will confer with the affected state agency and the local government to modify the proposed action to be consistent with the local plan.

10. Any local government which has had a waterfront revitalization program approved pursuant to this section may withdraw its program at any time by filing with the secretary a copy of a resolution of its legislative body providing for such withdrawal. Upon receipt of such resolution, the secretary shall immediately notify all affected state agencies.

### **§915-b. Water dependent uses**

Notwithstanding any other provision of law, water dependent use activities as defined in subdivision eleven of section nine hundred eleven of this article, shall not be considered a private nuisance, provided such activities were commenced prior to the surrounding activities and have not been determined to be the cause of conditions dangerous to life or health as determined by the commissioner of health, the local health officer, or local board of health pursuant to sections thirteen hundred, thirteen hundred-a, thirteen hundred three and thirteen hundred four of the public health law and any disturbance to enjoyment of land has not materially increased.

### **§916. Benefits of approved waterfront revitalization programs**

In recognition of the state policy set forth in this article to encourage the revitalization of waterfront areas in a manner consistent with local objectives, the following benefits shall apply where a local government waterfront revitalization program has been approved pursuant to section nine hundred fifteen or section nine hundred fifteen-a of this article.

1. a. The secretary shall examine programs operated by state agencies which may have the potential to affect the policies and purposes of an approved waterfront revitalization program. Such examination shall include programs which involve issuance of permits, licenses, certifications and other forms of approval of land use or development, the provision of grants, loans and other funding assistance which leads to or influences land use or development, directly undertaken land use or development and planning activities. The secretary shall, within sixty days after approval of a waterfront revitalization program, identify actions under such state agency programs which are likely to affect the achievement of the policies and purposes of such approved program, and shall notify the affected state agency. The secretary may at any time identify additional actions and notify the affected state agencies thereof.

b. The state agency program actions so identified shall be undertaken in a manner which is consistent to the maximum extent practicable with the approved waterfront revitalization program. Reviews by state agencies of proposed actions to determine consistency with approved waterfront revitalization programs shall be coordinated with and made a part of other agency procedures, including reviews conducted under the state environmental quality review act as provided in article eight of the environmental conservation law.

2. The governor's office of regulatory reform\* shall conduct continuing studies of means of expediting development called for in approved programs. The secretary shall assist the governor's office of regulatory reform\* in the conduct of such studies, which should address the consolidation, simplification, expediting or otherwise improving permit procedures which may affect development called for in such areas taking into account the state policy set forth in this article to provide consistency of program actions at all levels of government for such areas.

3. The secretary shall consult and work with state agencies, including, but not limited to, the urban development corporation, the job development authority, the environmental facilities corporation, the office of parks, recreation and historic preservation and the departments of economic development and transportation, to seek to identify additional means of effectuating approved waterfront revitalization programs. The secretary shall make recommendations to local,

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\*Formerly known as office of business permits and regulatory assistance

state and federal agencies and the legislature, as appropriate.

### **§917. Technical assistance**

The secretary shall encourage and assist local governments in the preparation of waterfront revitalization programs and in the administration and implementation of approved programs. Such assistance shall be provided on request by the local government and shall include, as may be deemed appropriate by the secretary, the provision of maps, data, criteria, model implementation provisions, and technical counsel and advice. In addition, the secretary shall facilitate consultation and coordination among local, county, regional, state and federal agencies and community based groups in connection with the preparation and administration of approved waterfront revitalization programs, and to facilitate the development of projects called for by approved programs.

### **§918. Financial assistance**

1. The secretary may enter into a contract or contracts for grants to be made, within the limits of any appropriations therefor, for the following:

a. To any local governments, or to two or more local governments, for projects approved by the secretary which lead to preparation of a waterfront revitalization program; provided, however, that such grants shall not exceed fifty percent of the approved cost of such projects;

b. To any local government or local government agency for research, design, and other activities which serve to facilitate construction projects provided for in an approved waterfront revitalization program; provided, however, that such grants shall not exceed ten percent of the estimated cost of such construction project.

2. Funds available for the purposes of this section shall be allocated in a fair and equitable manner; such allocation shall reflect the initiative shown by local governments in preparing waterfront revitalization programs and in carrying them out.

### **§919. Coordination of state actions and programs**

1. Actions directly undertaken by state agencies within the coastal area including grants, loans or other funding assistance, land use and development, or planning, and land transactions shall be consistent with the coastal area policies of this article. Provided, however, that nothing in this article shall be construed to authorize or require the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

2. The secretary shall review actions proposed by state agencies which may affect the achievement of the policies of this article and shall make recommendations to such agencies with respect to achievement of such policies.

3. The commissioner of environmental conservation shall amend the regulations promulgated pursuant to article eight of the environmental conservation law as necessary and appropriate to assure adequate consideration of impacts on the use and conservation of coastal resources.

### **§920. Data collection and inventory**

1. The secretary shall maintain a resource inventory of information collected pursuant to coastal and inland waterways program planning including significant natural areas, historic sites, agricultural lands and water dependent use areas.

2. The secretary may collect additional information to supplement the inventory and may delegate the preparation of such information to appropriate state and local agencies.

3. The secretary shall make this inventory available to state agencies, local governments and the public for planning purposes.

### **§921. Amendment of coastal zone management program**

1. The secretary shall amend this state's coastal zone management program submitted to the United States secretary of commerce pursuant to section fourteen hundred fifty-five of the coastal zone management act (16 USC §§ 1451 et seq.), to incorporate the requirements of this section and the findings and purposes specified in title sixteen of article fifteen of the environmental conservation law and shall formally submit the proposed amendments to the United States secretary of commerce.

2. After approval by the United States secretary of commerce of the amendments submitted pursuant to subdivision one of this section, the secretary shall, under section nine hundred nineteen of this article, consider the requirements,



findings and purposes specified under subdivision one of this section, if applicable, when reviewing actions proposed by state agencies which may affect the achievement of the policies of this article, and make recommendations to such agencies with respect to achievement thereof.

## **§922. Comprehensive harbor management plans**

1. In order to implement a comprehensive harbor management plan the local legislative body of a city, town or village may adopt, amend and enforce local laws or ordinances, not inconsistent with the laws of this state or the United States, to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures, temporary or permanent, in, on or above waters and the use of surface waters and underwater lands within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from the shore. Such local laws or ordinances may provide for the imposition of fees for reasonable expenses incurred by the city, town or village in carrying out this regulatory authority.

2. No local law or ordinance adopted pursuant to the powers granted by this section shall take effect until it shall have been submitted to and approved in writing by the secretary of state, nor shall such local law or ordinance affect projects and facilities undertaken or constructed by public authorities for which a statutory exemption has been provided or public authorities formed by compact with another state or any subsidiary thereof formed pursuant to bi-state legislation. The secretary of state shall not approve any local law or ordinance without first consulting with the commissioner of general services and other interested state agencies administering state-owned lands underwater, nor shall the secretary approve any local law or ordinance not in accordance with any comprehensive harbor management plan adopted as part of a local waterfront revitalization program by the local legislative body of the city, town or village and approved by the secretary pursuant to this article.

3. (a) Municipalities on lakes, other than those lakes identified in subdivision four of section nine hundred eleven of this article, may, pursuant to this section, develop cooperative lakewide local waterfront revitalization programs and harbor management plans.

(b) Where no local waterfront revitalization program and harbor management plan exists which has been cooperatively prepared by all of the municipalities which border the shores of such a lake, no local law or ordinance adopted by one such municipality pursuant to a harbor management plan shall be approved without a finding by the secretary of state that the local law or ordinance is consistent as well with the management of the lake by, and interests of, the lake residents and its municipalities as a whole.

(c) Where an organization or entity has been created by statute to provide lakewide planning or regulation, such local laws or ordinances shall be consistent with the plans developed by such organization or entity pursuant to the procedures required in such statute.

4. No provision of this chapter shall be deemed to diminish the authority of any city, town or village pertaining to the regulation of harbors, surface waters and underwater lands granted by any other law, charter, patent or other instrument. Nor shall it be read to authorize local harbor management plans displacing conforming water-dependent businesses in existence on the effective date of this section.

5. Any conveyances of interests pursuant to subdivision seven of section seventy-five of the public lands law and any permits issued pursuant to subdivision one of section 15-0503 of the environmental conservation law shall be consistent, insofar as possible, with approved comprehensive harbor management plans adopted pursuant to this section.

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