

# TITLE L

## WATER MANAGEMENT AND PROTECTION

### CHAPTER 481

#### STATE DAMS, RESERVOIRS AND OTHER WATER CONSERVATION PROJECTS

#### General Provisions

##### Section 481:1

**481:1 Declaration of Policy.** – The general court finds that an adequate supply of water is indispensable to the health, welfare and safety of the people of the state and is essential to the balance of the natural environment of the state. Further, the water resources of the state are subject to an ever-increasing demand for new and competing uses. The general court declares and determines that the water of New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations. The state as trustee of this resource for the public benefit declares that it has the authority and responsibility to provide careful stewardship over all the waters lying within its boundaries. The maximum public benefit shall be sought, including the assurance of health and safety, the enhancement of ecological and aesthetic values, and the overall economic, recreational and social well-being of the people of the state. All levels of government within the state, all departments, agencies, boards and commissions, and all other entities, public or private, having authority over the use, disposition or diversion of water resources, or over the use of the land overlying, or adjacent to, the water resources of the state, shall comply with this policy and with the state's comprehensive plan and program for water resources management and protection.

**Source.** 1935, 121:1. 1937, 118:1. RL 266:1. RSA 481:1. 1981, 505:1. 1983, 402:2. 1985, 400:6, eff. June 26, 1985.

##### Section 481:1-a

###### **481:1-a Declaration of Need.** –

I. It is declared that there is a statewide need for conservation and distribution of water and the regulation of the flow of rivers and streams, and for the development and promotion of hydro-energy resources, and that the public interest, welfare and necessity may, at times, require the construction of projects for the conservation, development, storage, distribution, and utilization of water and the operation of hydro-energy production facilities relying on water energy resources. The department of environmental services shall be regarded as performing a governmental function in carrying out these provisions. In carrying out the provisions and purposes of this chapter, the department of environmental services shall not, however, perform promotion activities which involve new or existing hydroelectric generation projects.

II. It is further declared that there is a special public need for dams, reservoirs and hydro-energy production facilities at strategic locations for regulating the flow of rivers and streams to lessen damages resulting from floods and to promote the state's industrial and economic welfare by enhancing and utilizing the present and potential water power along the rivers and streams. The construction, maintenance and operation of such dams, reservoirs and hydro-energy production facilities is the primary purpose of this chapter.

**Source.** 1985, 400:6. 1986, 202:16, eff. Jan. 2, 1987.

## Section 481:1-b

**481:1-b Water Resources Committee.** – [Repealed 2010, 368:1(32), eff. Dec. 31, 2010.]

## Section 481:2

### **481:2 Definitions.** –

As used in this chapter, the following words shall have the following meanings:

I. "Commissioner" means the commissioner of the department of environmental services.

I-a. "Department" means the department of environmental services.

II. [Omitted.]

III. "Cost of project" shall mean the cost of construction; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for construction; the cost of all machinery and equipment; financing charges; interest prior to and during construction; cost of engineering and legal expense, plans, specifications, surveys, estimates of costs, and other expenses necessary or incident to determining the feasibility or practicability of any project; all costs to operate, maintain, and repair the project; the proportionate administrative expense properly allocable to a project as determined by the department; and other expenses as may be necessary or incident to the construction, operation, maintenance, and repair of the project.

III-a. "Groundwater" shall mean all water in the ground below the water table.

IV. "Hydro-energy production facility" shall mean any of those facilities which are adapted to producing and utilizing electrical or mechanical power from water resources, such as power plants and appurtenant substations, including transmission lines to the extent that the lines are necessary to utilize the power produced by a hydro-energy production facility.

V. "Project" shall be deemed to include all property, rights, easements and franchises relating to the project and necessary or convenient for its operation. "Project" shall include all means of accomplishing the purposes set forth in RSA 481:1, including, but not limited to, projects involving reservoirs, dams, diversion and distribution canals, lateral ditches, pumping units, mains, pipe lines, waterworks systems and hydro-energy production facilities. The department may enter into projects by means of contracts or agreements with any public or private entity.

**Source.** 1935, 121:2. 1937, 118:2. RL 266:2. RSA 481:2. 1981, 505:2. 1983, 402:3. 1986, 202:6, I(k). 1996, 228:53, 54, 106. 2009, 112:5, eff. Aug. 14, 2009.

## Section 481:3

### **481:3 Authority of Commissioner.** –

The commissioner may engage in projects, financed as set forth in this chapter. The commissioner is authorized:

I. To investigate and identify the facilities for storing surplus water, and for conserving, controlling and distributing surplus water, and to investigate and identify facilities for the production and utilization of hydro-energy;

II. To acquire, hold and dispose of personal property for the department's purposes;

III. To acquire in the name of the state by purchase, condemnation, lease, or otherwise, real property and rights and easements relating to the real property deemed by it necessary or desirable for its corporate purposes. The commissioner may also use the property;

IV. To sell, lease and dispose of real property and rights and easements relating to the real property not needed in the judgment of the commissioner for the purposes of this chapter;

V. To construct, reconstruct, maintain and operate projects;

VI. To charge and collect fees, rents and tolls for water, the use of water, water supply, water storage, hydro-energy production facilities, sites for hydro-energy production facilities, and other related services, subject to and in accordance with agreements with bondholders, water users, developers and operators as provided in this chapter;

VII. [Repealed.]

VIII. To exercise any of the commissioner's powers:

(a) In any adjoining state or adjoining country, unless the exercise of the power is not permitted under the laws of such state, a country or the United States of America; or

(b) In any public domain of the United States adjoining or located in this state, unless the exercise of the power is not permitted under the laws of the United States of America;

IX. [Repealed.]

X. To apply for and hold all necessary permits and licenses, and to meet all requirements of the Federal Energy Regulatory Commission in developing hydro-energy production facilities, subject to the authority of the division of economic development in the department of business and economic affairs to promote hydro-energy projects;

X-a. To provide technical assistance to the division of economic development of the department of business and economic affairs when the division requests such assistance in the promotion or development of a hydro-energy project;

XI. [Repealed.]

XII. [Repealed.]

XIII. To do all things necessary or incidental to the foregoing powers.

**Source.** 1935, 121:3. RL 266:3. RSA 481:3. 1969, 399:2. 1981, 505:3. 1983, 402:4, 5. 1985, 215:1. 1986, 202:6, I(k), 17, 18, 29, XI. 1989, 339:35, XII. 1996, 228:55, 56, 104, 106. 2009, 112:13, II, III, eff. Aug. 14, 2009. 2017, 156:14, II, eff. July 1, 2017.

### **Section 481:3-a**

#### **481:3-a Lease Program for Lake Francis. –**

It is the intent of the legislature to authorize a property leasing program, upon those lands under the jurisdiction of the department on the Lake Francis impoundment property. The goal of the property leasing program is to make a solid contribution to the economic vitality of the Pittsburg-Clarksville region. This policy is further designed to engender an appreciation for the appeal of northern New Hampshire for the people of New Hampshire. To accomplish these goals the department shall establish and administer, upon the property of the Lake Francis impoundment area, a property leasing program as a responsibility secondary in priority to the ongoing water resource project of Lake Francis. The department shall have the full authority, as is required, to organize a property leasing program which is compatible with its primary on-site water resource project. The administration of the property leasing program shall be accomplished subject to the following conditions:

I. The present lessees shall be given first priority in leasing their present property under the new program.

II. The term of the leases, subject to appropriate behavior as determined by the department, shall be 25 years and shall be renewable at the option of the lessee. The rental payment shall be recalculated and adjusted no later than 5 years following its last determination.

**Source.** 1996, 135:1. 2009, 112:6, eff. Aug. 14, 2009.

### **Section 481:4**

**481:4 Corporation Established. –** [Repealed 2009, 112:13, IV, eff. Aug. 14, 2009.]

### **Section 481:5**

**481:5 Salary of Chairman of Board. –** [Repealed 1986, 202:29, XII, eff. Jan. 2, 1987.]

### **Section 481:6**

#### **481:6 Powers. –**

I. The commissioner shall have the power to make contracts with the United States, any state in the United States, a foreign country, or any public corporation or body in another state or country.

II. The commissioner may:

(a) Accept grants from the United States or any federal agency;

- (b) Cooperate with or accept aid from the United States or any federal agency in the construction, maintenance, operation and financing of any project;
- (c) Do all things necessary in order to receive federal aid or engage in cooperation with the federal government;
- (d) Cooperate with any adjoining state or agencies of a state in the planning, construction, maintenance, operation, or financing of any project located partly within this state; and
- (e) Use and control all public waters of the state and all waters to which the state is entitled by reason of water rights owned by the state as is necessary to carry out this chapter.

**Source.** 1935, 121:5. RL 266:5. 1950, 9:1. RSA 481:6. 1981, 505:4. 1986, 202:20. 1996, 228:105, eff. July 1, 1996.

### **Section 481:6-a**

**481:6-a Bylaws; Records; Personnel.** – [Repealed 2009, 112:13, V, eff. Aug. 14, 2009.]

### **Section 481:6-b**

**481:6-b Department Liability.** – [Repealed 2009, 112:13, VI, eff. Aug. 14, 2009.]

### **Section 481:6-c**

**481:6-c Property Exempt From Levy.** – All property of the department and all property held in the name of the state under this chapter shall be exempt from levy and sale by virtue of an execution. No execution or similar judicial process shall issue against the property. No judgment against the department shall be a lien upon its property or the property held in the name of the state under this chapter.

**Source.** 1981, 505:5. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:7**

**481:7 Project Reports; Hearing and Order.** – [Repealed 2009, 112:13, VII, eff. Aug. 14, 2009.]

### **Section 481:8**

**481:8 Contracts.** –

I. The department, in order to make the project so far as possible self-liquidating and self-supporting, shall make contracts in the name of the department with persons or corporations as may be specially benefited by the project, including users of water in and outside the state for power or other purposes, covering the terms under which the persons or corporations shall pay for the benefits. No contract shall extend for more than 50 years from the completion of the project. The compensation for the use of stored water or other benefits created by the projects shall be made equitable as among different users. All contracts shall benefit and bind the contracting users and their successors in title to the dams, water and flowage rights, generating plants, mills, or other real estate constituting the property on account of whose benefit the compensation is payable. All contracts entered into by the department for the construction of a project or for the use of stored water must be approved by the governor and council.

II. If the department undertakes a project in which the electricity is to be generated at the dam or reservoir site, the department, for the purpose of making the project so far as possible self-liquidating and self-supporting, shall make contracts with developers or operators of the hydro-energy production facility as the department may determine to be best qualified or with such users or distributors of the mechanical or electrical power generated by the facility as the department may determine to best serve the interests of the state. The contracts shall include terms under which the persons shall make full and proper restitution to the state. No contract with an operator, user, or distributor of electrical or mechanical power shall extend for more than 50 years from the completion of the project. All contracts with an operator, user, or distributor of mechanical or electrical power

shall benefit and bind their successors in interest. All contracts entered into by the department under this paragraph shall be subject to the approval of the governor and council.

III. Notwithstanding paragraphs I and II, all contracts shall provide that in the event of a shortage crisis, as determined by the governor and council, in either the water resources of the state or the capacity to fulfill the electrical requirements of the state, the governor and council may suspend the terms of contracts which provide services outside of the state to fulfill the needs and requirements of the citizens of New Hampshire.

**Source.** 1935, 121:7. 1937, 118:4, 9. RL 266:7. RSA 481:8. 1981, 505:6. 1986, 202:6, I(k). 1996, 228:106. 2009, 112:7, eff. Aug. 14, 2009.

### **Section 481:8-a**

**481:8-a Municipal Obligations.** – The obligations of a political subdivision consisting of a municipality as defined in RSA 33:1 in a contract with the department under this chapter shall be binding on such municipality to the same extent as other debts lawfully contracted by it and said municipality shall annually appropriate a sum which together with any other funds available therefor shall be sufficient to pay such obligations; provided, however, no such obligation shall at any time be deemed indebtedness of such municipality for the purpose of ascertaining its borrowing capacity under the provisions of RSA 33:5-a or any other limitation upon its borrowing capacity.

**Source.** 1965, 105:1. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:9**

**481:9 Stored Water; Judicial Determination of Compensation.** – If a user of water substantially benefited by a project shall decline to enter into a contract as provided in RSA 481:8 or if the department and such user cannot agree upon the compensation to be paid by him, either party may, before or after the completion of such project, apply by petition in equity to the superior court for the county in which the benefited property is situated to determine such compensation. If the proceeding is brought by the department and such user files a disclaimer of any right to use stored water as defined in RSA 481:12, the petition shall be dismissed; otherwise, the court, after hearing, shall determine the compensation for benefits justly payable by such user and enter a decree entitling him to make use of stored water subject to payment thereof and fixing the time and manner of such payment. The compensation fixed by the decree shall not exceed the benefit resulting or to result to the user, shall be proportioned to the compensation payable by other users under existing contracts relative to the same project, and may be made payable in amortized or other installments in the same manner as the compensation provided for in such contracts, and the court, on proper application and notice, may subsequently modify or revise the decree as justice may require. Any decree entered pursuant to this section and any subsequent modification or revision thereof shall inure to the benefit of and bind the user and his successors in title.

**Source.** 1937, 118:5. RL 266:8. RSA 481:9. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:9-a**

**481:9-a Hydro-energy Production Facility a Public Utility.** – [Repealed 1989, 339:35, XIII, eff. Jan. 1, 1990.]

### **Section 481:10**

**481:10 Acquisition of Property.** – For the purposes of any project within its authority, said department may acquire such land, easements, flowage rights and interests or rights in lands of any nature whatsoever, hereinafter referred to as real estate, as may be needed by purchase, lease, or otherwise and upon such terms and conditions, including price, as the department may deem reasonable. Whenever any real estate, including such as may be held for public use, of any county, city, town, school district, village district, or other political subdivision is

required for the purposes of any such project, the commissioners for such county, the mayor and city council or other governing body for such city, the selectmen for such town, the school board for such district, and the commissioners or other governing body for such village district or political subdivision may grant and convey or surrender such real estate for such compensation and upon such terms and conditions as may be agreed upon by such official representatives and the department. All real estate acquired hereunder shall be held in the name of the state except as otherwise herein provided. Forthwith, upon the acquisition by the department in the name of the state, through purchase, condemnation, or otherwise of any real estate, the same shall, without further action, and by virtue hereof, be and become dedicated to the use and purposes of the department.

**Source.** 1935, 121:8. 1937, 118:6. 1939, 203:2. RL 266:9. RSA 481:10. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:10-a**

**481:10-a Notice Required for Hydro-energy Generation Projects.** – [Repealed 1989, 339:35, XIV, eff. Jan. 1, 1990.]

### **Section 481:11**

**481:11 Changing Locations.** – Whenever it shall become necessary for the purposes of any project within the authority of said department to flow water upon or otherwise prevent the use of any highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities in public use, if the department shall find that the accommodation or convenience of the public requires a change in the grade of such highway or bridge or the relocation of such highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities in public use and if it shall be unable to agree with the person, corporation, town, or other municipality having such highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities for such change in grade or for such relocation, said department may apply by petition to the superior court in the county where such highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities, or any part thereof, is located for authority to change the grade of such highway or bridge or for the relocation of such highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities and for determination of the damages, if any, which may be occasioned to any person, corporation, town, or other municipality by reason of such change or relocation. The superior court, upon the filing of such petition, shall order notice thereof to be given in such manner as may seem fit and such proceedings shall be had thereon as justice may require. For the purpose of relocating any such highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities, the superior court may appoint 3 suitable persons as commissioners who shall, after hearing the parties, make such relocation and file a return of their proceedings in the superior court. Said department, in accordance with the terms of the final decree, including the payment or tender of such damages as may be awarded, shall be entitled to proceed with such change in grade or such relocation. Said department may acquire such lands, easements and other rights and interests in land as may be necessary for the relocation of any highway, bridge, electric transmission or distribution line, telephone or telegraph line, or other property or facilities in public use in the manner provided in RSA 481:10, but the title thereto shall be taken in the name of the person, corporation, town or other municipality for whose benefit said real estate is acquired.

**Source.** 1935, 121:9. 1939, 203:3. RL 266:10. RSA 481:11. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:12**

**481:12 Unlawful Use of Stored Water; Penalty.** – As used in this section, the term "stored water" is defined as water released from storage provided under the terms hereof in excess of the amount which would naturally flow at the time of such release if storage facilities had not been so provided and maintained. It shall be unlawful (1) for any person not entitled thereto under a contract as provided in RSA 481:8 or a judicial decree as provided

in RSA 481:9 willfully to use for power or other purposes any stored water, or (2) for any person willfully to interfere with the flow of any stored water except so far as necessary in making a reasonable use of the same under such a contract or decree or a reasonable use of the natural flow in the exercise of his rights as a riparian or littoral proprietor, and any person, firm or corporation guilty of such unlawful use of or interference with the flow of stored water shall, upon conviction thereof, be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and each and every day of such unlawful use or interference shall be a separate offense. The superior court sitting in equity shall have jurisdiction to enjoin the unlawful use of stored water and it shall be the duty of the attorney general to prosecute proceedings for the enforcement of the provisions hereof, but no criminal prosecution or proceeding for injunction with respect to the use of stored water shall be instituted or prosecuted under this section against a user who is a party to a petition under RSA 481:9 during the pendency of such petition.

**Source.** 1935, 121:10. 1937, 118:7. RL 266:11. RSA 481:12. 1973, 529:116, eff. Oct. 31, 1973 at 11:59 p.m.

### **Section 481:13**

**481:13 Reservoirs; How Operated.** – The department shall regulate and direct the storage and release of water from each reservoir in such manner and at such times as shall be most beneficial for regulating the flow of rivers and streams to lessen damages resulting from floods and to promote the state's industrial and economic welfare by enhancing the present and potential water power and for supplying water to any political subdivision of the state for public or domestic use (provided that any such subdivision shall be required to pay to said department a fair and reasonable compensation as determined by said department for water so supplied) and subject thereto for water users in accordance with the provisions of contracts entered into pursuant to RSA 481:8. The department shall not interfere with or obstruct the flow of stored water released from any present or future water storage or conservation reservoir located upstream from said project.

**Source.** 1935, 121:11. 1937, 118:10. RL 266:12. 1943, 152:3. RSA 481:13. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:13-a**

**481:13-a Water Withdrawal; When Notification Required.** – Notwithstanding any provision of law to the contrary, before any private or municipal water company may withdraw water in excess of 100,000 gallons per day from a well located in one municipality for use in a different municipality, such water company shall provide written notice to the governing body of the municipality in which the well is located. This section shall apply only to wells established after the effective date of this section.

**Source.** 1996, 224:3, eff. Aug. 9, 1996.

### **Section 481:14**

**481:14 Tax Exemption.** – All property and rights acquired by the department shall be exempt from all taxation, but the department shall continue to make payments in lieu of taxes, on or before December 1 of each year, to each town or city to which the department made such payments as of December 31, 2008. Such sums shall be based on the tax rate then current in each town or city and on the average assessed valuation for a period of 5 years prior to the acquisition by the department; provided that when those towns or cities shall have made a general revaluation of property for tax assessment purposes, then the new values shall be used for the determination of the sums as would have been assessed against the property and rights in such town or city if the same had been included in the tax invoice for such year. Betterments, changes in land use or new structures are exempted and shall not be used for the determination of such sums to be paid in lieu of taxes. Provided, however, that the provisions of this section shall not apply to the dam and any appurtenances thereto owned by the department and located in the towns of Pittsburg and Clarksville, and there shall be paid annually to said towns the sum of \$40,000 in lieu of taxes, said sum to be apportioned between the towns in the same ratio that

the value of that portion of the dam and any appurtenances thereto located in each town bears to the total value of the dam and any appurtenances thereto as determined by the tax assessors of the towns.

**Source.** 1935, 121:12. RL 266:13. RSA 481:14. 1955, 327:1. 1986, 202:6, I(k). 1995, 162:1. 1996, 228:106. 2009, 112:8, eff. Aug. 14, 2009.

### **Section 481:14-a**

**481:14-a Terms Defined.** – The words "appurtenances thereto" as used in RSA 481:14 shall be deemed to include only land actually occupied by physical structures of the department and dam and to exclude all lands whether submerged or out of water.

**Source.** 1957, 294:1. 1986, 202:6, I(k). 1996, 228:106, eff. July 1, 1996.

### **Section 481:15**

**481:15 Bonds Authorized.** – [Repealed 2009, 112:13, VIII, eff. Aug. 14, 2009.]

### **Section 481:16**

**481:16 Interim Receipts.** – [Repealed 2009, 112:13, IX, eff. Aug. 14, 2009.]

### **Section 481:17**

**481:17 Remedies of Bondholders.** – [Repealed 2009, 112:13, X, eff. Aug. 14, 2009.]

### **Section 481:18**

**481:18 Assets to Pass to State.** – [Repealed 1986, 202:29, XIII, eff. Jan. 2, 1987.]

### **Section 481:19**

**481:19 Bonds Guaranteed.** – [Repealed 2009, 112:13, XI, eff. Aug. 14, 2009.]

### **Section 481:20**

**481:20 Interstate Compacts.** – [Repealed 1989, 339:35, XV, eff. Jan. 1, 1990.]

### **Section 481:21**

**481:21 Stream Flow Gauging Stations.** – [Repealed 1989, 339:35, XX, eff. Jan. 1, 1990.]

## **Consolidation of Water Control Commission and the Water Resources Board**

### **Section 481:22 to 481:24**

**481:22 to 481:24 [Omitted.]** – [Omitted.]

## **Soil Conservation Districts Projects**

## **Section 481:25 to 481:28**

**481:25 to 481:28 Repealed.** – [Repealed 1989, 339:35, XVI, eff. Jan. 1, 1990.]

## **Dam Maintenance**

### **Section 481:29 to 481:31**

**481:29 to 481:31 Repealed.** – [Repealed 1989, 339:35, XVII, eff. Jan. 1, 1990.]

### **Section 481:32**

#### **481:32 Hydro Funds. –**

I. Revenue to the state resulting from the leasing of state-owned dams for hydroelectric generation shall be credited to the fund established in RSA 482:55 for the purpose of the retirement of bonds and notes authorized by RSA 482:56.

II. Notwithstanding any other provision of law, the department may transfer to this fund such gifts and grants as it may from time to time receive, together with any surplus revenue held by the department and derived from its management of water resources properties.

III. Any amount of revenue over and above the amount required to retire said bonds shall be credited to the dam maintenance fund for the repair and reconstruction of other state-owned dams, authorized by the legislature and with the approval of governor and council, or for work on properties associated with state-owned dam sites.

**Source.** 1982, 24:1; 42:168. 1983, 169:1. 1986, 202:6, I(k). 1989, 339:32. 1996, 228:109. 2001, 138:2, eff. Aug. 28, 2001.

### **Section 481:32-a, 481:33**

**481:32-a, 481:33 Repealed.** – [Repealed 1989, 339:35, XVII, eff. Jan. 1, 1990.]