

# TITLE L

## WATER MANAGEMENT AND PROTECTION

### CHAPTER 482

#### DAMS, MILLS, AND FLOWAGE

##### Section 482:1

**482:1 Purpose.** – The general court declares that there is a statewide need for conservation and control of water in streams, rivers, lakes and ponds by the repair of dams now in disrepair, the construction of new dams, the construction of hydro-energy production facilities as defined in RSA 481:2, IV, and stream clearance and channel improvement. These actions are needed for the regulation of the water levels of lakes and ponds, the flow of water for fire prevention, protection to lessen flood damage, the enhancement of public safety, the improvement of recreational facilities within the state, and for any similar public purpose.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

##### Section 482:2

###### **482:2 Definitions.** –

Words and phrases used in this chapter shall mean and be construed as follows, except where a different meaning is clearly intended from the context:

I. "Classification of a dam" means the potential hazard classification placed on a dam by the department based on the potential threat to life and the potential extent of property damage in the event of accidental damage to, or failure of, the dam structure. The classifications shall be "non-menace," "low hazard potential," "significant hazard potential," or "high hazard potential."

II. (a) "Dam" means any artificial barrier, including appurtenant works, which impounds or diverts water and which has a height of 6 feet or more, or is located at the outlet of a great pond. A roadway culvert shall not be considered a dam if its invert is at the natural bed of the water course, it has adequate discharge capacity, and it does not impound water under normal circumstances. Artificial barriers which create surface impoundments for liquid industrial or liquid commercial wastes, septage, or sewage, regardless of height or storage capacity, shall be considered dams.

(b) An artificial barrier at a storm water detention basin, which impounds 0.5 acre-foot or less of water during normal conditions, shall not be considered a dam unless its height is 10 feet or greater or its maximum storage is 6 acre-feet or greater.

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

IV. "Department" means the department of environmental services.

V. "Dam in disrepair" means a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or is incapable of maintaining a reasonably constant level of waters impounded, or is one which does not contain adequate gates and sluiceways to provide for the holding or controlled discharge of waters impounded.

VI. "Emergency action plan" means a written document delineating a prescribed sequence of actions to be taken by a dam owner to inform the authorities and others downstream of an impending or actual sudden release of water caused by an accident to, or failure of, the dam. This plan shall be developed in consultation with local officials and notification of the plan shall be given to the general public who would be affected by a sudden release of water caused by an accident or other failure of the dam. The plan shall be kept on file with the local emergency management director and other local officials as deemed appropriate by the department.

VII. "Mills" shall include both manufacturing plants and plants at which electric power is generated for public distribution or for the operation of mills, railroads or public utilities.

VIII. "Person" means any individual, partnership, association, corporation, company, organization or legal entity

of any kind.

IX. [Omitted.]

X. "Reconstruction" means:

- (a) A change in the height, length, or discharge capacity of the structure;
- (b) Restoring a breached dam or one in ruins;
- (c) Modification of flashboards which either increases their height or increases the headwater elevation at which the flashboards will fail; or
- (d) A change in the structural configuration of a dam.

**Source.** 1989, 339:1. 1996, 228:58, 107. 1997, 51:1, 2. 2000, 182:1. 2006, 306:1, 2. 2009, 187:1, eff. Sept. 11, 2009.

### **Section 482:3**

#### **482:3 Authority of Commissioner. –**

The commissioner is authorized to:

- I. Provide technical assistance to the division of economic development, department of natural and cultural resources when the division requests such assistance in the promotion or development of a hydro-energy project.
- II. Continue and extend the survey and investigations of the ground-water resources of New Hampshire. To this end, the commissioner is authorized to enter into contracts with the United States Geological Survey. The findings of such surveys shall be made available to the public by means of maps or printed matter to be published or maintained in open file for reference.
- III. To investigate and identify the facilities for storing surplus water, and for conserving, controlling and distributing surplus water, including registering and reporting by water users, and to investigate and identify facilities for the production and utilization of hydro-energy.

**Source.** 1989, 339:1. 1996, 228:104, eff. July 1, 1996. 2017, 156:14, I, eff. July 1, 2017.

### **Section 482:4**

**482:4 Investigation of High and Low Levels. –** The department is authorized to make such investigations as, in its opinion, the public good requires with respect to high or low water levels in the inland public waters of the state and the rights, instrumentalities and practices which affect or control such levels with a view to the exercise of such control, in a manner consistent with public and private rights and interests, as will best promote the public health and safety and the enjoyment and value of such public waters. When the department may deem expedient, it may ascertain the extent to which owners and managers of dams take into consideration variations of runoff and plan for and anticipate emergencies. Owners of dams, at the reasonable request of the department shall make available to the department such records of water levels and flow of inland public waters as are made and kept by such owners to assist the department in knowing the remaining storage capacity of reservoirs, whether created by dams or otherwise, and to gauge the flow of streams. From time to time, the department may call to conference owners of dams for the purpose of obtaining cooperation in the regulation of stream flow to minimize damage to public and private property at times of high water. Whenever in the opinion of the department an emergency exists or is threatened whereby the public health or safety may be jeopardized by the release or withholding of stored waters, it shall direct such action by the owner or manager of a dam with respect to the release or withholding of water as it may deem necessary in the public interest.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:5**

**482:5 Non-permitted Existing Dams. –** Upon written notice from the department, the owner of a non-permitted existing dam shall submit an application for a permit for said dam to the department along with a fee based on the classification of the dam under RSA 482:9. The application shall provide such information as the

department may require to determine whether or not the dam is a menace to the public safety. Following a review of the permit application, the department may issue a permit to the owner with necessary conditions for the repair or reconstruction of the dam which the department deems necessary for the public safety. Such repair work shall be undertaken within a time period fixed by the department.

**Source.** 1989, 339:1. 1996, 228:106. 2006, 306:3. 2007, 329:2, eff. July 1, 2007.

### **Section 482:6**

**482:6 Existing Dams on Great Ponds.** – Upon written notice from the department, the owner of a non-permitted dam on the outlet of a great pond shall comply with the provisions of RSA 482:5. The department, after 30 days' notice to abutters, to the governing body of the municipality in which the dam is situated, to the fish and game department, and to the department of safety, shall hold a public hearing, notice of which shall be published 7 days before the hearing in one newspaper of general circulation throughout the state. If, as a result of said hearing and further investigation, the department shall be of the opinion that management and control of the outlet of the great pond would be of benefit to the public, it may order the management of said outlet under whatever conditions it finds necessary to protect the public rights and safety; provided, however, the owner shall be fully compensated for any loss sustained by action of the department with respect to a dam which was previously registered or legalized.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:7**

**482:7 New Dams on Great Ponds.** – No dam shall be constructed on the outlet of a great pond after September 3, 1977, without specific authorization from the legislature and without a permit to construct a dam from the department according to such terms and conditions as it deems necessary for the public safety.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:8**

**482:8 Orders and Permits Recorded.** – Permitting of a dam pursuant to RSA 482:5 or the granting of a permit for a dam pursuant to RSA 482:7 by the department does not relieve the owner from meeting the requirements of public safety or other provisions of law nor does it convey a property right or authorize any injury to property or invasion of other rights. The department shall record any orders or permits issued under the provisions of this section with the registry of deeds in the county or counties in which the dam and flowage are situated, and no fee shall be charged for such recording.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:8-a**

**482:8-a Annual Registration Fee.** – Annual registration fees for dams shall be payable to the department on January 1 of each calendar year. Yearly dam registration fees shall be based on classification as follows: Low hazard potential = \$400; Significant hazard potential = \$750; High hazard potential = \$1,500. If the hazard classification designated by the Federal Energy Regulatory Commission for a dam differs from the classification designated by the department, the annual dam registration fees shall be based on the classification designated by the Federal Energy Regulatory Commission except that a dam which is classified as a non-menace dam by the department shall be exempt from the annual dam registration fee for as long as the dam is classified by the department as a non-menace dam. Revenues from this annual registration are to be collected by the department and deposited in the dam maintenance fund established in RSA 482:55 to be used for the inspection of dams.

**Source.** 1989, 408:74. 1990, 3:82. 1991, 287:1. 1996, 228:106, 107. 1997, 122:2. 2006, 306:4. 2007, 329:1. 2008, 272:4. 2009, 31:1, eff. July 14, 2009.

## Erection and Inspection of Dams

### Section 482:9

#### **482:9 Preliminary Filing of Information.** –

I. No person shall begin the construction or reconstruction of any dam until:

(a) The person has filed with the department a statement of the height of the proposed dam and the location at which it is to be erected and any other information the department may require.

(b) A permit has been issued by the department.

II. The filing of the statement required by paragraph I or an application required by RSA 482:5 shall be accompanied by a fee for each statement or application filed. The fee shall be deposited in the dam maintenance fund established in RSA 482:55 to be used for the permitting of dams. The fee shall be as follows:

(a) Non-hazard potential dam \$2,000

(b) Low hazard potential dam \$3,000

(c) Significant hazard potential dam \$4,000

(d) High hazard potential dam \$4,000

III. After receipt of the statement required under paragraph I of this section if the department shall be of the opinion that the proposed dam, if improperly constructed or reconstructed, would be a menace to the public safety, it shall notify the owner or applicant, and the construction or reconstruction of the dam shall not begin until plans and specifications shall have been filed and a permit for construction issued by the department.

IV. [Repealed.]

V. The department shall not permit the construction or reconstruction of any significant hazard potential or high hazard potential dam unless:

(a) The dam provides a public benefit of water supply, flood control, storage or treatment of industrial, agricultural, commercial, or municipal wastes, hydropower, public recreation, or preservation of historic or cultural resources; or

(b) The reconstruction is ordered by the department to correct a deficiency identified by the department.

**Source.** 1989, 339:1. 1990, 3:83. 1996, 228:106. 1997, 122:3, 4; 178:1, 2. 2000, 182:2. 2006, 306:5, 6. 2007, 329: 3, 5, eff. July 1, 2007.

### Section 482:10

**482:10 Supervision.** – The department may designate some competent inspector to inspect the construction or reconstruction of any dam for which approved plans and specifications and a permit for construction have been required under RSA 482:9 and such inspector shall report to the department any failure to comply with said plans and specifications.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### Section 482:11

#### **482:11 Orders.** –

I. The department may order the owner or contractor, while constructing or reconstructing any such dam, to remedy any defects caused by failure to comply with the requirements of the plans and specifications or to do anything necessary to make said construction comply with said plans and specifications, and on failure to comply with any such order, the department may order all work of construction on such dam to cease and may take any other action authorized by RSA 482:89.

II. The commissioner may issue an order to any person who violates this chapter as specified in RSA 482:89, I, and require such remedial or restorative measures as may be necessary. Any order issued by the department

pursuant to this chapter may be recorded in the registry of deeds for the county in which the subject facility is situated. A recorded order shall run with the land; provided, that an appropriate description of the land involved including the accurate name of the owner thereof is included in the order. No fee shall be charged for recording an order; however, a fee may be charged for discharging an order.

III. If the department finds that an emergency exists requiring immediate action to protect the public safety, it may issue an order stating that an emergency exists and requiring that such action be taken as necessary to meet the emergency. Any person to whom such an order is directed shall comply immediately, but may appeal to the water council established under RSA 21-O:7.

**Source.** 1989, 339:1. 1996, 228:106. 2008, 272:1, eff. Jan. 1, 2009.

### **Section 482:11-a**

**482:11-a Duty of Owner.** – The owner of a dam shall maintain and repair the dam so that it shall not become a dam in disrepair. The owner shall develop an emergency action plan for any dam, the failure of which may threaten life or property.

**Source.** 1997, 178:3, eff. Aug. 16, 1997.

### **Section 482:12**

#### **482:12 Inspecting Dams, Repairs, Emergency Action Plans.** –

I. It shall be the duty of the department from time to time to cause all dams in the state which, by reason of their condition, height or location, may be a menace to the public safety to be inspected by competent engineers. A dam that is classified as a non-menace structure as of February 20, 1981 shall retain such status until the department determines conditions downstream have changed since the dam was classified that warrant reclassification or until such reconstruction of the dam is needed requiring a permit to reconstruct the dam.

II. If the inspection indicates that maintenance or repair are required to comply with RSA 482:11-a or the public safety requires the repair or reconstruction of any dam or the development of an emergency action plan, the department shall order the owner of the dam to undertake the requisite maintenance, repairs, or reconstruction and to develop the emergency action plan within a period to be fixed by the order.

**Source.** 1989, 339:1. 1996, 228:106. 1997, 178:4. 2008, 272:2, eff. Jan. 1, 2009. 2018, 119:1, eff. July 29, 2018.

### **Section 482:13**

#### **482:13 Public Informational Meeting Required.** –

I. No owner shall breach any dam, lower any water body for the repair of any dam, or cause any significant lowering of the water level in a pond or lake without first notifying the local governing body in the cities or towns where said dam or water body is located and the department at least 30 days prior to any action specified above. The provisions of this section shall not apply to dams impounding bodies of water less than 10 acres or to the normal scheduled lowering of water levels each fall, the normal lowering of a water body by the exercise of water rights, the lowering of water levels by the department of environmental services to protect instream flows under RSA 483:9-c, or the lowering of water levels in any emergency situation.

II. The dam owner, in cooperation with the local governing body of each of the cities or towns, shall hold a public informational meeting at least 15 days prior to any action under paragraph I. The dam owner shall publish a notice of the public informational meeting in a newspaper of general circulation in the county in which the action shall occur at least 7 days before the time set for said meeting. The public notice and informational meeting required by this section shall be in addition to and not in place of other provisions of law pertaining to dams.

**Source.** 1989, 339:1. 2010, 128:1, eff. Aug. 8, 2010. 2013, 91:1, eff. Aug. 19, 2013.

## Section 482:14

**482:14 Appeals.** – All orders issued by the department under the provisions of this subdivision shall be subject to appeal pursuant to RSA 21-O:14 but shall remain in force until modified or set aside on appeal.

**Source.** 1989, 339:1. 1996, 228:59, eff. July 1, 1996.

## Section 482:15

**482:15 Penalties; Injunction.** – [Repealed 2008, 272:6, I, eff. Jan. 1, 2009.]

## Section 482:16

**482:16 Expenses.** – The expense of examining plans or specifications and of inspecting the construction or reconstruction of a dam as authorized in this subdivision, including the salaries of the regular employees of the department for the time actually devoted to work necessary to such examination or inspection, shall be paid to the department by the owner of the dam in connection with which it is incurred. If any owner shall not promptly pay the expense of such examination or inspection, when requested by the department, it may be collected in an action brought by the attorney general in the name of the state. All sums so received shall be paid to the state, and shall be added to the appropriation available for the use of the department in the employment of experts.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## Flowage

### Section 482:17

**482:17 Right Granted.** – Any person or corporation authorized by its charter or articles of agreement to do so may erect and maintain on his or its land, or on land of another, with the owner's consent, a dam upon or across any stream or may increase by flashboards or permanently the height of any dam already so maintained by him or it for the purpose of raising the water to work any mill or mills on such stream or on another stream to which the same is tributary or for the purpose of creating a reservoir of water or raising the level of a public or other lake or pond to control, conserve or equalize the flow of such stream or streams for the benefit of any such mill or mills, upon obtaining authority to do so as provided in this subdivision.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### Section 482:18

**482:18 Conflicting Claims.** – The provisions of this subdivision shall in no way affect any mill of other persons lawfully existing on the same stream or any mill site or mill privilege of other persons on which a milldam has been lawfully erected and used or the right of any owner of such mill, mill site or mill privilege, unless the right to maintain on such last mentioned site or privilege shall have been lost or defeated by abandonment or otherwise, and nonuse of any mill site or mill privilege for a period of 6 years shall be prima facie evidence of abandonment; nor shall the provisions of this subdivision affect any flowage or other water rights acquired prior to June 17, 1937, or the right to maintain any dam constructed prior to June 17, 1937.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### Section 482:19

### **482:19 Notice Required for Hydro-energy Generation Projects. –**

I. Every applicant to the Federal Energy Regulatory Commission for the permits and licenses, or modifications of permits or licenses, necessary for the development, construction, or reconstruction of a hydro-energy project shall place, on or prior to the date of such application, a notice of his intent in at least 2 local newspapers in the area where the proposed work is to be done and shall notify the following by certified mail, return receipt requested, that he intends to undertake a hydroenergy project:

(a) The owners of the dam site of the proposed project.

(b) The local governing body, planning board, and conservation commission of each municipality in which the project is sited.

II. The notice required in paragraph I shall include a brief description of the project for which the permit, license, or modification of the permit or license is to be sought, as well as a statement by the developer explaining the purpose of the project and his reasons for the development of a hydroelectric generation project.

III. The department shall deny any applicant violating this section any permit necessary for study and subsequent construction of the proposed project. The department shall notify the Federal Energy Regulatory Commission of any denial under this section.

**Source.** 1989, 339:1. 1996, 228:60, eff. July 1, 1996.

## **Section 482:20**

**482:20 Termination of Rights.** – All rights, powers, privileges and franchises conferred upon any corporation, enabling it to construct and maintain milldams upon the streams of this state and to flow lands or do any other act necessary to the development of hydroelectric energy, shall terminate and be forfeited at the end of 6 years from the date on which the act of incorporation took effect, unless the actual work of constructing such dams or power plants shall be commenced during such 6 years and be prosecuted with reasonable diligence until such dams and plants are completed and in operation.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:21**

**482:21 Forfeiture.** – Upon the written complaint of any citizen filed with the attorney general, setting forth that any corporation has failed to commence the actual work of constructing its dam or plant during the time limited by RSA 482:20 or has failed to prosecute the same with reasonable diligence until such dam or plant has been completed and in operation, it shall be the duty of the attorney general to enforce by an appropriate proceeding a forfeiture of the rights, powers, privileges and franchises under which the corporation might have erected its dam or plant.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:22**

**482:22 Highways.** – The provisions of this subdivision shall not affect the right of any town in any highway or bridge which the town may be liable to keep in repair, nor authorize any unreasonable interference with the use of any stream as a public highway.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

# **Repairs of Mills and Milldams**

## **Section 482:23**

**482:23 Responsibility for Repairs.** – The necessary repairs on a mill, milldam or flume owned by joint tenants, or tenants in common, or owned in severalty when the privilege of the water is owned jointly or in common, shall be made by the owners in proportion to their respective interests in such structures.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:24**

**482:24 Petition for Order; Two Towns.** –

I. When in the opinion of the owner of any part or share of a mill, milldam or flume it is necessary that it be rebuilt or repaired, and the other part owners neglect to rebuild or repair the same, he may apply, by petition in writing, to the selectmen of the town in which it is situated for an order to rebuild or repair. The petition shall contain a description of the premises, the names and shares of all persons interested in the structure who are known, the purpose of the application, including the scope of the proposed project, and a request for a hearing.

II. If such mill, milldam or flume is situated in 2 or more towns the petitions shall be to the selectmen of all the towns, and like proceedings shall be had before them as a joint board.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:25**

**482:25 Notice; Posting.** – The selectmen shall appoint a time and place of hearing, and notify all persons interested by causing a copy of the petition and notice of the time and place appointed to be served in hand or by certified mail, return receipt requested to each such person, if known and residing in the state, at least 14 days before the hearing. If the identity or residence of an owner of any part or share is unknown, such copy and notice shall be posted in 2 or more public places in the town, 20 days before the hearing, and shall be published in a newspaper or newspapers distributed throughout the state. If the owner resides out of state, a copy of the petition and notice shall be served pursuant to RSA 510:4 at least 30 days prior to the hearing. If any person interested is under guardianship, or is a tenant for life or years, or a mortgagee in possession, the guardian, tenant or mortgagee shall be so notified, and may be ordered to contribute as owner, and shall have a lien for the sum contributed upon the part or share of the owner on account of whose part or share such sum is paid.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:26**

**482:26 Hearing; Order; Assent.** – The selectmen shall personally examine the premises, hear all persons interested, and, after consultation with the department, if they are of the opinion that the mill, milldam or flume ought to be rebuilt or repaired, they shall, by writing under their hands, order the owners to rebuild or repair, specifying the proportion or share of the expense and of the costs of the petition and hearing to be borne by each, and the time, and, if they deem it appropriate, the manner, in which it shall be done. However, no order to rebuild shall be made unless the owners of at least 1/2 of the premises to be rebuilt assent to such order.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:27**

**482:27 Neglect to Comply; Lien on Share.** – If any person interested neglects to comply with the order, any one or more of the others may rebuild or repair his part or share; and the cost of such repair or reconstruction, upon notice, shall be determined and certified by the selectmen, with their charges for the service, and the amount of such costs may be recovered of such delinquent, with interest at the statutory rate established in RSA 336:1. The person paying the cost and charges shall have a lien for such cost and charges upon such delinquent's



part or share, and the rents and profits of such part or share, until the amount, with the interest and all taxes and repairs, is repaid.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:28**

**482:28 Special Contracts.** – If the owners of such mill, milldam or flume have made a special contract in respect to rebuilding or repairing the same, the decision of the selectmen concerning apportionment of costs shall conform to the contract. This section shall not limit the extent of repairs deemed necessary by the selectmen.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

# **Proceedings Before the Department**

## **Section 482:29**

### **482:29 Application for Permit Before Flowing.** –

I. Any person proposing to erect a dam or to increase, by flashboards or permanently, the height of any existing dam for any of the purposes provided in RSA 482:17 shall file an application for a permit with the department, setting forth the location, height and description of the proposed dam or proposed increase in any existing dam.

II. The application for a permit to construct or reconstruct any dam for any of the purposes provided in RSA 482:17 shall be accompanied by a deposit to the department of \$100 with each such application. This payment shall be for expenses of publication, mailing, posting of notices, and copies of hearing transcripts, if necessary, by the department, and for the expense of hiring a hearing site, if a hearing outside of Concord is necessary. If said expenses amount to more than \$100, the department shall order the applicant to pay the additional amount before any decision is made by the department with regard to said application.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:30**

### **482:30 Notice and Investigation.** –

I. Upon receipt of a petition, the department shall fix a time and place for hearing the petition and shall issue an order of notice to all parties interested, which shall be published for 3 successive weeks in some newspaper in the county in which the dam is to be erected or is situated, the last publication to be not less than 14 days before the time fixed for hearing. Said order of notice shall be served on the attorney general, and such further notice, if any, shall be given as the department may order.

II. The department may conduct such reasonable studies and investigations as they deem necessary or appropriate to implement the purposes of this subdivision and may employ a consultant or consultants to assist with the duties imposed by this subdivision, the cost of which shall be borne by the applicants in such amount as may be approved by the department.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:31**

**482:31 Hearing; Permit.** – The department shall, after hearing, determine whether it will be of public use and benefit to grant the rights asked for, and in such determination, shall give due consideration to the effect upon scenic and recreational values and upon fish and wildlife and upon the natural flow of the water in the stream below the dam and any hazards to navigation, fishing, bathing and other public uses. The department shall, in all cases, investigate the question whether the cutting clean and removal of all timber and tree growth

from all or any part of the flowage area is reasonably required in the public interests, and in such cases as it shall find that such cutting clean and removal of all timber and tree growth from all or any part of the flowage area are so required, such cutting clean and removal of all timber and tree growth shall be a condition to the exercise of such rights. The department shall embody all its findings in its permit.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:32**

**482:32 Effect of Finding.** – No other dam shall be erected to the injury of any proposed dam or any proposed increase in any existing dam which, in either case, has been found to be for the public good by the department pursuant to this subdivision, if the petitioner shall, within 3 years after such finding or within such further time as the department for good cause may grant, commence the construction and prosecute said construction with reasonable diligence.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Proceedings in Court**

### **Section 482:33**

**482:33 Petition for Assessment of Damages.** – If the land of any person shall be overflowed, drained or otherwise injured by the use of any dam or addition to such dam and the damage shall not, within 30 days after due notice of such damage, be satisfactorily adjusted by the party erecting or maintaining the dam or increase in such dam, either party may apply by petition to the superior court in the county or counties where such damage arises to have said damage that has been or may be done assessed.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:34**

**482:34 Contents of Petition.** – The petition shall set out the title and description of the premises damaged, the right by reason of which the grievance arises, the location of the dam and the extent of the damages that the dam or dam addition has or may have occasioned.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:35**

**482:35 Reference.** – The court, after notice to all persons interested, shall, unless the parties agree upon the judgment that shall be rendered, refer the petition to a committee of 3 disinterested persons to be appointed by the court to determine in relation to the matters set forth in the petition.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:36**

**482:36 Hearing; Report.** – The committee shall give such notice to the parties as shall be ordered by the court, shall hear the parties, view the premises, estimate the damages and make a report to the court at the next term of the court.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:37**

**482:37 Order.** – Upon return of the report, any person interested in the report may object to its acceptance for any irregularity or improper conduct on the part of the committee, and the court may set it aside for cause. If the report shall be accepted and established, the court shall render judgment on the report.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:38**

**482:38 Jury Trial.** – Before reference of such petition to the committee, if either party shall so elect, the court shall direct an issue to the jury to the facts alleged in the petition and to assess the damages, and judgment shall be rendered on the verdict of the jury. The court may award costs to either party at its discretion.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:39**

**482:39 Damage to Other Land.** – The committee or jury assessing the damage shall take into consideration any damage done to other land of the party flowed, as well as the damage occasioned to the land actually occupied.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:40**

**482:40 Petition Before Flowing.** – Any person proposing to erect a dam or to increase, permanently or by flashboards, any existing dam, having obtained a permit from the department as provided in RSA 482:31, may file in the superior court a petition setting forth the location, height and description of the proposed dam or increase in any existing dam, and the title and description of the land involved or the rights in the land to be taken, and applying for the assessment of damages occasioned by such taking in advance of the taking. The court shall then proceed in accordance with the provisions of RSA 482:35-39, inclusive.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:41**

**482:41 Security for Damages.** – Any person, upon filing a petition as provided by RSA 482:33 or 482:40, may be required at any time, upon application to the court in which such petition is filed, to give within a reasonable time such security as justice may require for any damages which have been or may be occasioned by such proceedings or to satisfy any judgment which may be rendered in such proceedings, and no such person shall derive any title from the proceedings or shall be discharged from any liability in relation to the premises until the person aggrieved or damaged has been paid or tendered the amount of the judgment rendered.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

# **License to Flow Public Lands**

## **Section 482:42**

**482:42 License to Flow Public Lands.** – The governor and council may grant to the owner of a dam located at the outlet of an inland public water the right to flow public lands contiguous to such public water and its

tributaries when, in the opinion of the department, it is in the public interest to do so, and under such terms and conditions with respect to water levels and otherwise as the department may specify.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:43**

**482:43 Deeds.** – Any such grant of right of flowage and the conditions upon which the same is made shall be evidenced by deed executed in the name of the state by the governor and attested by the secretary of state and recorded in the county where the property is situated.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Dams in Disrepair and Channel Improvement**

### **Section 482:44**

#### **482:44 Authority Granted.** –

To implement this subdivision, the department is authorized:

- I. To hold in the name of the state real property and rights and easements in such property, including dams in disrepair, deemed by it necessary or desirable for the purposes of this subdivision, and to use such property; provided, however, that no dam or any real property appurtenant to a dam or any rights and easements in either may be acquired pursuant to the authority of this section or any other provision of law except an act of the legislature which authorizes the acquisition of a particular dam, real property, or right or easement.
- II. To construct, reconstruct, maintain and operate such dams and other real property, rights and easements.
- III. To enter into agreements whereby individuals, firms, corporations, or municipal corporations may obligate themselves or itself to the payment of the costs or any part of the costs for acquisition, construction, maintenance or operation of facilities as provided for in paragraphs I and II.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:45**

#### **482:45 Approval of Facilities.** –

I. [Omitted.]

II. The department shall study and survey each facility and shall submit to the governor and council a report including a detailed description and plan of the facility and a detailed estimate of the total cost of the facility and of the funds which may be received from individuals, firms, corporations or municipal corporations for such facility. The governor and council, upon receiving such report, shall determine whether the proposed facility will be of public use and benefit and within the authority conferred upon the department. No facility under this subdivision shall be finally undertaken until the same is approved by the governor and council.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:46**

**482:46 Application of Statutes.** – The provisions of RSA 481:1-19, 482:85, and 482:91 shall apply to the facilities undertaken under the authority of this subdivision insofar as the same are not inconsistent with the provisions of this subdivision.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## Section 482:47

**482:47 Municipal Appropriations.** – For the purpose of paying the expense, or a part of the expense, of the cost of a facility undertaken by the state under the provisions of this subdivision, as provided by any agreement with the state, a city or town may raise and appropriate such sums of money as may be required under such agreement or may borrow money and issue serial notes or bonds for the paying of such expense.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## Acquisition by State of Certain Dams and Water Rights

### Section 482:48

#### **482:48 Acquisition Authorized.** –

I. For a consideration of \$1, unless otherwise noted, the department is authorized to accept conveyance from the property owners the following described property for the purpose of improving and controlling certain water rights for the benefit of the state. The department shall own all property and interest held by the former water resources council. The department after acquisition shall, from time to time, make repairs and modifications to the dams so acquired or rebuild them if required to best serve the interests of the state. The properties the department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the properties are held by the state.

- (a) The dam, water rights, and lands used in connection with Mirror Lake dam on a tributary of Hubbard Brook and Pemigewasset River in the town of Woodstock in Grafton county.
- (b) From the towns of Barrington, Northwood, and Nottingham, the dam on North River Pond situated in the town of Nottingham, water rights, land, and other connected facilities.
- (c) The dam at the outlet of Angle Pond in the town of Sandown, water rights, land, and other connected facilities.
- (d) The dam on Pine River Pond in the town of Wakefield, water rights, land, and other connected facilities. The department shall place a suitable plaque at the dam with such detail as the department deems appropriate.
- (e) The dam, dikes, and appurtenances containing and controlling the waters of Hubbard Pond in the town of Rindge, including flumes, sluiceways, equipment, and apparatus connected with or appurtenant to said dam and dikes including the right to pass or repass to said dam and dikes for the operation, maintenance, repair, reconstruction, and construction of said dam, dikes, and appurtenances. The grantor's right, title, and interest in the lands above the highwater level of the aforesaid pond, including all islands, which have been previously conveyed to them are hereby reserved.
- (f) The dam, dikes, and appurtenances containing and controlling the waters of Pratt Pond in the town of Mason, including flumes, sluiceways, equipment, and apparatus connected with or appurtenant to said dam and dikes including the right to pass or repass to said dam and dikes for the operation, maintenance, repair, reconstruction, and construction of said dam, dikes and appurtenances. The grantor's right, title, and interest in the lands above the highwater level of the aforesaid pond, including all islands, which have been conveyed to them are reserved.
- (g) The dam, dikes, and appurtenances containing and controlling the waters of Ballard Pond in the town of Derry, including flumes, sluiceways, equipment, and apparatus connected with or appurtenant to said dam and dikes, including the right to pass or repass to said dam and dikes for the operation, maintenance, repair, reconstruction, and construction of said dam, dikes, and appurtenances. The grantor's right, title, and interest in the lands above the highwater level of the aforesaid pond, including all islands, which have been conveyed to them are reserved. The ownership, use, and maintenance of the Taylor Mill, near the dam on Ballard Pond in the town of Derry, including all necessary machinery and controls, is not conveyed by this paragraph.
- (h) The dam, dikes, and appurtenances containing and controlling the waters of the Black reservoir in the town of Jaffrey, known as number 124.06, including flumes, sluiceways, equipment, and apparatus connected with or appurtenant to said dam and dikes, including the right to pass and repass to said dam and dikes for the operation, maintenance, repair, reconstruction, and construction of said dam, dikes, and appurtenances. The grantor's right, title, and interest in the lands above the highwater level of the aforesaid reservoir, including all islands, which have been previously conveyed to them are reserved. The department is authorized to rebuild, repair, and

maintain the reservoir to best serve the interests of the state, utilizing moneys from the dam maintenance fund established under RSA 482:55.

(i) The dam known as Shell Camp Pond dam or Jones Mill dam on Shell Camp Pond situated in the town of Gilmanton, water rights, land, and other connected facilities. Any land or facilities acquired by the department as a result of the acquisition authorized by this paragraph which the department, with the approval of the governor and council, determines not to be necessary to retain in order to achieve the purposes of this paragraph and any salvageable material similarly acquired shall be sold and the proceeds from such sale returned to the special fund established by RSA 270-E:5, II(a).

(j) Dams and water rights controlling Pawtuckaway Pond and Mendum Pond in the towns of Nottingham and Barrington with approximately 700 acres of land bordering said waters in said towns.

(k) The dam, water rights, and lands used in connection with the Bunker Pond in Epping.

(l) The dam, water rights, and lands used in connection with Chandler Pond in Landaff.

(m) The dam, water rights, and land use permits used in connection with the Oliverian Dam in the United States National Forest in Benton.

(n) The dam known as Waumbek Dam and as number 161.07, in the town of Milton, water rights, land, and other connected facilities.

(o) The dam known as Rowe Dam and as number 161.11, in the town of Milton, water rights, land, and other connected facilities.

(p) The dam, water rights, and lands used in connection with Hawkins Pond in the town of Center Harbor.

(q) The Buck Street dam, on the Suncook River at the junction of Glass Street and Buck Street in the towns of Pembroke and Allenstown in Merrimack county, and the water rights, land, and other connected facilities.

(r) The dam, water rights, land, and any connected buildings at Mascoma Lake in the towns of Lebanon and Enfield.

(s) The dam, water rights, and connected land on the Goose Pond brook in the towns of Canaan and Hanover.

(t) The dam, water rights, and connected land on Crystal Lake Brook in the town of Enfield.

(u) The dam, water rights, and connected land at Grafton Pond in the town of Grafton.

(v) The Newfound Lake dam on Newfound Lake in the town of Bristol in Grafton county, and the water rights, land, and other connected facilities.

(w) The Kelley Falls dam on the Piscataquog River in the immediate vicinity of the Nazaire Biron Bridge in the city of Manchester in Hillsborough county, and the water rights, land, and other connected facilities. The grantor shall provide a suitable public access to the site of the conveyance and to the impoundment above the dam if none exists.

(x) For a sum of \$25,000 paid to the department by the Avery Dam corporation, the department is authorized to accept conveyance from the owners of the following described property for the purpose of improving and controlling certain water rights for the benefit of the state: The dam, water, easements, and connected lands known as Avery dam on the Winnepesaukee River in the city of Laconia. The department is further authorized to enter into an agreement with the Avery Dam corporation for the use of stored water from Lake Opechee in the city of Laconia, said agreement for a term of 10 years to guarantee the grantor the right of water usage from said lake at the now existing rate. The money received under this paragraph and any other revenue received for the same purposes shall be paid to the department and held in a special fund to be used exclusively for the repair and maintenance of the Avery dam in Laconia.

(y) The Pittsfield dam on the Suncook River in the town of Pittsfield, as a gift in the name of the state of New Hampshire from the town of Pittsfield.

(z) Dams and water rights on and in the Suncook River extending from the town of Barnstead through Gilmanton to the town of Alton.

(aa) Dams, water rights, and lands connected therewith at Contoocook River park dam in the city of Concord and town of Hopkinton; Suncook River dam in Barnstead; Steele Pond in Antrim; and at Winnisquam Lake in Tilton, Sanbornton, Belmont, and Laconia.

(bb) The so-called Contoocook River park dam, water rights, land, and other connected facilities in the city of Concord.

(cc) The so-called outlet canal dam, water rights, land, and other connected facilities in the city of Concord.

(dd) Dam, water rights, and connected lands at Lovell Lake in the town of Wakefield.

(ee) Dam, water rights, and connected land at Great East Pond, Horn Pond, and Union Meadows Pond in the town of Wakefield.

(ff) Dam, water rights, and connected lands at Milton Three Ponds in the town of Milton and Kingswood Lake in the town of Brookfield and Wilsons Pond in the town of Acton, Maine.

(gg)(1) For a sum of \$10,000 paid to the department by the Unitil, the department is authorized to accept conveyances from the owners of the following described properties for the purpose of improving and controlling certain water rights for the benefit of the state: Dam, water rights, and connected lands known as the Sewalls Falls dam on the Merrimack river in the City of Concord.

(2) The money received under RSA 482:48, I(gg)(1) and any other revenue received for the same purposes shall be paid to the department and held in a special fund to be used exclusively for the repair and maintenance of the Sewalls Falls dam in Concord. Expenditures from this fund may be made for the purposes of this paragraph by the department with the prior approval of the governor and council.

(hh) The Ossipee Lake dam, land, and other rights located in Effingham, New Hampshire from the Central Maine Power Co. of Augusta, Maine provided, however, that the towns of Ossipee, Freedom, and Effingham shall enter into an agreement with the department, which agreement provides that the said towns of Ossipee, Freedom, and Effingham shall accept the responsibility for the operation and maintenance of the Ossipee Lake dam under the supervision of the department.

II. (a) Governor and council approval having been granted, legislative approval is hereby given to the land conservation investment program to accept the following dams and assign to the department of fish and game for management purposes, including but not limited to operation and minor maintenance of said structures, as follows:

(1) Little Bog Pond dam, Odell, dam #185.03.

(2) Trio Ponds dam, Odell, dam #185.02.

(b) The governor and council shall authorize the acceptance of Meadow Lake dam in Northwood, dam #183.16, by the land conservation investment program only after all repairs have been completed, and the dam is deemed satisfactory through an inspection by the department. Upon acceptance, the land conservation investment program shall assign the dam and any contiguous property to the department of natural and cultural resources for management purposes, including but not limited to operation and minor maintenance of said structures.

(c) The land conservation investment program shall transfer \$60,000 to the dam maintenance fund under RSA 482:55 to offset future repairs for the dams listed in subparagraph (a).

(d) Any property that the state is authorized to acquire under this subdivision shall be exempt from taxation as long as the property is held by the state.

III. Notwithstanding any of the above provisions, the New Hampshire fish and game department is authorized to accept Garland Pond dam, Ossipee dam #188.19 in its current state of disrepair, for the purpose and intent of future dam construction for wildlife management.

IV. Notwithstanding any of the above provisions, the fish and game department is authorized to accept approximately 77 acres abutting Morrill Pond and Morrill Pond dam, No. 38.21 in its current state of disrepair, for the purpose and intent of future dam construction for wildlife management.

V. For a consideration of \$1, the department of natural and cultural resources, division of parks and recreation, is authorized to accept the Jericho Lake dam and dike in the city of Berlin.

VI. For a consideration of \$1, the fish and game department is authorized to accept conveyance from the property owners of all water and property rights necessary to repair, maintain, and operate Big Brook Bog dam in the town of Pittsburg, known as number 194.14, for the purpose of improving and controlling the water rights for the benefit of the state. The property rights the fish and game department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the properties are held by the state. The rights to be acquired shall include the right to maintain Big Brook Bog dam in its historic configuration as it existed prior to February 1, 2003, or any other configuration beneficial to the state. The fish and game department may transfer rights in Big Brook Bog dam under RSA 482:51 to the department for purposes of repair and maintenance.

VII. For a consideration of \$1, the fish and game department is authorized to accept conveyance from the property owners of all water and property rights necessary to repair, maintain, and operate the following described properties for the purpose of improving and controlling the water rights for the benefit of the state. The property rights the fish and game department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the properties are held by the state. The fish and game department may transfer rights in these properties under RSA 482:51 to the department for purposes of repair and maintenance. With the exception of such \$1 consideration, nothing in this paragraph shall mandate or authorize the expenditure of any funds or capital relative to the provisions of this paragraph.

- (a) Shehan Pond Dam in the town of Clarksville, known as number 48.06.
- (b) Pearly Terrill Dam in the town of Pittsburg, known as number 194.05.
- (c) Mountain Pond Dam in the town of Pittsburg, known as number 194.17, also known as Boundary Pond Dam. The rights to be acquired shall include the right to maintain Mountain Pond Dam in its historic configuration as it existed prior to May 1, 2010, or any other configuration beneficial to the state.
- (d) Coon Brook Bog Dam in the town of Pittsburg, known as number 194.18.
- (e) Round Pond Dam in the town of Pittsburg, known as number 194.27.

VIII. For a consideration of \$1, the fish and game department may accept an easement from the property owners of all rights necessary to repair, maintain, and operate Akers Pond dam access and dike area in the town of Errol, adjacent to and abutting the state owned dam known as number 080.20 for the purpose of improving and controlling the water rights for the benefit of the state. The easement the fish and game department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the easement is held by the state. The fish and game department may transfer rights in these properties under RSA 482:51 to the department for purposes of repair and maintenance. With the exception of such \$1 consideration, nothing in this paragraph shall mandate or authorize the expenditure of any funds or capital relative to the provisions of this paragraph.

IX. For a consideration of \$1 each, the department of environmental services may accept an easement from the property owners of all rights necessary to access, repair, maintain, and operate the dike at Northwood Lake in the town of Epsom appurtenant to the state owned dam known as number 079.01 and the dike at Hermit Lake in the town of Sanbornton appurtenant to the state owned dam known as number 211.01, for the purpose of improving and controlling the water rights for the benefit of the state. The easements the department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the easements are held by the state. With the exception of such \$1 consideration for each, nothing in this paragraph shall mandate or authorize the expenditure of any funds or capital relative to the provisions of this paragraph.

X. For a consideration of \$1 each, the department of environmental services may accept an easement from the property owners of all rights necessary to access, repair, maintain, and operate Back Lake dam in the town of Pittsburg, Lake Armington dam in the town of Piermont, Cass Pond dam in the town of Epsom, and Chesham Pond dam in the town of Harrisville for the purpose of repairing and reconstructing such dams. The easements the department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the easements are held by the state. With the exception of such \$1 consideration for each, nothing in this paragraph shall mandate or authorize the expenditure of any funds or capital relative to the provisions of this paragraph.

**Source.** 1989, 339:1; 420:1. 1990, 229:21. 1991, 368:1, 4. 1992, 151:1-3. 1993, 189:2. 1995, 144:1. 1996, 228:106, 107. 2006, 306:7, 8. 2009, 112:9. 2011, 102:1, eff. July 30, 2011. 2013, 17:1, eff. July 15, 2013. 2015, 85:1, eff. Aug. 4, 2015. 2017, 156:14, I, eff. July 1, 2017.

## **Section 482:49**

### **482:49 Acquisition Authorized; Department of Fish and Game. –**

I. For a consideration of \$1, the New Hampshire department of fish and game is authorized to accept conveyance and attendant easements from the owners of the following described properties for the purposes listed for each property.

II. The department of fish and game is authorized to rebuild and maintain said dams subject to specifications of the department of environmental services. The funding for the construction shall be accomplished under the Dingell-Johnson federal aid program, P.L. 81-681, and any other available federal aid programs.

III. The properties the department of fish and game is authorized to acquire under this section for the benefit of the state shall be exempt from taxation as long as said properties are held by the state.

(a) To improve and control certain water rights for smelt spawning and for the fishing season for the benefit of the state, the 1/4 acres more-or-less abutting Lucas Pond in Northwood including the dam on the land necessary for the rebuilding of Lucas Pond dam. The department of fish and game is authorized to accept from any abutting landowners an easement to provide construction road access to the dam site.

(b) To improve and control certain water rights for the perpetuation of a reclaimed trout pond: the Whittemore Pond dam, listed as dam No. 22.01 in the files of the department of environmental services and located in the towns of Bennington and Greenfield, Hillsborough county. The department of fish and game shall obtain other attendant easements which may be necessary to provide access for the purpose of maintenance or repair of said



dam but not for the purpose of public access. In addition to the funding under paragraph II, funding for repairs to Whittimore Pond dam shall be accomplished by public or private donations.

(c) To improve and control certain water rights, from the owner of a certain parcel of land surrounding a dam site across Jones Brook, otherwise located on state-owned land known as the Jones Brook wildlife management area, in the town of Middleton, county of Strafford, and state of New Hampshire, and further described as follows: Commencing at a point 75 feet due west of the northwest corner of the emergency spillway for the impoundment, said point being the point of beginning; thence due north 50 feet; thence due east 750 feet; thence due south 250 feet; thence due west 750 feet; thence northerly 200 feet to the point of beginning.

(d) The outlet dam, water rights, and 2.5 acre car-top boat launch access area at Robb Reservoir in the town of Stoddard, Cheshire county.

**Source.** 1989, 339:1. 1996, 228:106. 2007, 38:1, eff. July 13, 2007.

## **Section 482:50**

**482:50 Dams Owned by Fish and Game.** – Revenue to the state resulting from the leasing for hydroelectric generation of any dams owned by the department of fish and game which were funded by the Pittman-Robertson or Dingell-Johnson federal aid in fish and wildlife restoration programs shall be credited to the fund established by RSA 482:55, but shall be expended exclusively for work on any federally-funded dams owned by the department of fish and game. Such revenue shall be so expended during the same year in which it is generated.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:51**

### **482:51 Dam Rights and Easements; Transfer.** –

The department is authorized to accept the transfer of necessary rights and easements in and to the following described dams from the state agencies that are the owners or custodians of such dams for the purpose of providing access and construction work areas and for the purpose of consolidating their repair and maintenance in a single state agency. The operation of dams shall remain under the control of the owner or custodian agency.

I. After the transfer authorized in this section, the department shall, from time to time, make repairs and restorations to those dams most in need of repair or restoration so as to serve the interests of the state. Federal or other matching funds or grants may be used in combination with moneys from the dam maintenance fund established under RSA 482:55 to accomplish the needed repair or restoration. The department is subject to the requirements set forth in RSA 482:57, relative to repairs or restoration.

II. The dams authorized for transfer to the department by this section shall be exempt from taxation as long as said properties are held by the state.

III. The department is further authorized to accept the transfer, of necessary rights and easements only, for purposes of maintenance and repair, of additional dams not listed in this section from any state agency by mutual agreement.

IV. Division of forests and lands, department of natural and cultural resources.

(a) Campsite Pond in the town of Hillsborough, known as number 116.08; and

(b) Duck Pond in the town of Tamworth, known as number 233.16.

V. The division of parks and recreation, department of natural and cultural resources.

(a) Swimming area in the town of Allenstown, known as number 4.10.

(b) Spruce Pond in the town of Deerfield, known as number 61.07.

(c) Bear Hill Pond in the town of Allenstown, known as number 4.01.

(d) Willey House in Hart's Location, known as number 110.01.

(e) Lonesome Lake in the town of Lincoln, known as number 137.11.

(f) Echo Lake in the town of Franconia, known as number 86.06.

(g) Profile Lake in the town of Franconia, known as number 86.07.

(h) Beaver Pond in the town of Greenfield, known as number 98.02.

(i) Gilson Pond in the town of Jaffrey, known as number 124.10.

(j) Upper Pool in the town of Gorham, known as number 94.05.

- (k) Lower Pool in the town of Gorham, known as number 94.11.
  - (l) North Pond in the town of Washington, known as number 245.14.
  - (m) Butterfield Pond in the town of Washington, known as number 245.01.
  - (n) Mill Pond in the town of Washington, known as number 245.13.
  - (o) Pisgah Reservoir in the town of Winchester, known as number 255.11.
  - (p) Fullam Pond in the town of Chesterfield, known as number 45.04.
  - (q) Silver Lake in the town of Hollis, known as number 119.06.
  - (r) White Lake in the town of Tamworth, known as number 233.09.
- VI. The department. The water supply reservoir in the town of Benton, known as number 23.03.
- VII. The department of transportation.
- (a) Fort Eddy Pond in the city of Concord, known as number 51.33.
  - (b) Beard's Creek in the town of Durham, known as number 71.08.
  - (c) Taylor River in the town of Hampton Falls, known as number 106.09.
  - (d) Goldfish Pond in the town of Hooksett, known as number 120.06.
  - (e) Pennichuck Brook tributary in the city of Nashua, known as number 165.19.
  - (f) Pool Pond in the town of Rindge, known as number 203.42.
  - (g) Wright Lodge Pond in the town of Rumney, known as number 207.13.
  - (h) Lake Gloriette dams in the town of Dixville, known as numbers 65.01 and 65.02.
- VIII. The fish and game department.
- (a) Alton Power Dam, on the Merrymeeting River, in the town of Alton, known as number 6.02.
  - (b) Danbury Bog in the town of Danbury, known as number 58.03.
  - (c) Merrymeeting Lake in the town of New Durham, known as number 170.01.
  - (d) Jones Pond in the town of New Durham, known as number 170.02.
  - (e) Fish Hatchery Pond in the town of New Hampton, known as number 173.04.
  - (f) Moose Falls in the town of Pittsburg, known as number 194.13.
  - (g) Big Brook Bog in the town of Pittsburg, known as number 194.14.
  - (h) Stratford Bog Pond in the town of Stratford, known as number 225.04.
  - (i) Melvin River Pond in the town of Tuftonboro, known as number 239.01.
  - (j) Copp's Pond in the town of Tuftonboro, known as number 239.09.

**Source.** 1989, 339:1. 1993, 189:3. 1996, 228:106, 109, eff. July 1, 1996. 2017, 156:14, I, eff. July 1, 2017.

## **Section 482:52**

### **482:52 Investigation and Construction of a Lake Management Structure at Silver Lake in Belmont. –**

The department is authorized to investigate conditions affecting the use and enjoyment of Silver Lake and when funds are available therefor to construct an outlet control structure and make channel improvements.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:53**

**482:53 Agency to Receive Funds. –** The department is authorized to apply for and receive in the name of the state any funds which are or may become available for the purpose of RSA 482:52 from the federal government or any other source. The department is authorized to acquire by gift any lands, water rights, easements or other property rights from the owners of lake frontage on Silver Lake, any funds which may be offered to make the project possible, or both.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

# **Dam Maintenance Fund**

## **Section 482:54**

#### **482:54 Definitions. –**

As used in this subdivision:

- I. "Contract construction" shall mean work performed after competitive bid by use of an independent contractor in combination with the department.
- II. "Emergency" shall mean a circumstance whereby life or property is threatened or will be threatened unless work is performed in a timely manner.
- III. "Force account" shall mean use of a work force and equipment directly on the state payroll, including rented equipment and associated labor at current state of New Hampshire equipment rental rates.
- IV. "Minor project" shall mean maintenance work performed on a periodic basis with costs not exceeding \$20,000.
- V. "Reconstruction" shall mean performance of major amounts of work on most if not all of the structure to restore it to its original condition or to upgrade it to current design standards with the cost in excess of \$75,000.
- VI. "Repair" shall mean performance of intermediate amounts of work on a portion of a structure or associated property on an occasional basis with costs not exceeding \$75,000. Repair items include, but are not limited to, replacement of gates, refacing of eroded concrete, repair or replacement of wingwalls, placement of riprap, and emergency repairs. Associated property includes property contiguous to the dam and noncontiguous property, such as rainfall and stream gages, that is essential to the safe operation of the dam.

**Source.** 1989, 339:1. 1996, 228:107. 2001, 138:3, eff. Aug. 28, 2001.

### **Section 482:55**

**482:55 Fund Established. –** For the state of New Hampshire to meet its commitments to maintain its dams and impoundments and associated property for future generations and promote the safety of the public, there is established a dam maintenance fund to cover the cost of performing work on state-owned dams and property associated with and contiguous to state-owned dam sites, as well as noncontiguous property, such as rainfall and stream gages, that is essential to the safe operation of the dam. This fund shall be a nonlapsing fund which shall be continually appropriated for the purposes of this section.

**Source.** 1989, 339:1. 1991, 368:2. 2001, 138:4, eff. Aug. 28, 2001.

### **Section 482:55-a**

#### **482:55-a Dam Maintenance Revolving Loan Fund Established. –**

- I. A dam maintenance revolving loan fund shall be established to provide low interest loans to fund the maintenance, repair, removal, or improvement of any dams excluding state owned dams, when such maintenance, repair, removal, or improvement is required under this chapter. This fund shall be nonlapsing and shall be continually appropriated to the department for the purposes of this section. No loans shall be made from this fund until the fund has accrued a balance of at least \$25,000. Dam owners receiving loans from this fund shall repay the department on a time frame specified in rules established by the department. The commissioner shall collect all loan repayment moneys and deposit them in this fund.
- II. The department shall establish rules for the fund including the application process, criteria for award, the procedure for making loans, the interest rate to be applied, the maximum loan amount, the time frame for repayment, actions to be taken in the event of a default on a loan, and oversight of the administration of the fund. In providing loans, the department shall evaluate the risk posed by the dam, the public benefit of the dam, the private benefit of the dam to lakefront owners, the ecological impacts of the dam, the potential for contributions to needed maintenance, repair, or reconstruction, the financial resources of the applicant, and the relative cost of maintaining, repairing, or improving the dam as compared to removing or breaching the dam.
- III. Sources of revenue that may be accepted by the dam maintenance revolving loan fund include:
  - (a) Any funds that may be appropriated from the general fund.
  - (b) Principal and interest received from the repayment of loans made from the fund.
  - (c) Grants and awards made to the state by the federal government for the purpose for which the fund was established.
  - (d) Interest earned from the investment of fund balances.

- (e) Private gifts, bequests, and donations made to the state for the purpose for which the fund was established.
- (f) Any other funds from any public or private source intended to be used for the purpose for which the fund was established.

**Source.** 2008, 272:5. 2009, 110:1, eff. Aug. 14, 2009. 2013, 45:1, eff. Aug. 3, 2013.

## **Section 482:56**

**482:56 Bonds Authorized.** – To provide working capital for initiation of the fund established in RSA 482:55, the state treasurer is hereby authorized to borrow upon the credit of the state the sum of \$9,800,000 and for said purpose shall issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A.

**Source.** 1989, 339:1. 1991, 351:7. 1993, 359:5. 1995, 309:27. 1997, 349:17, eff. July 1, 1997.

## **Section 482:57**

### **482:57 Expenditure.** –

Notwithstanding other provisions of law, the commissioner of environmental services shall expend such sums from the dam maintenance fund as are necessary for performance of work on state-owned dams and property associated with and contiguous to state-owned dam sites, as well as noncontiguous property, such as rainfall and stream gages, that is essential to the safe operation of the dam only in the following categories:

- I. Minor projects and emergency repairs, including emergency action plans, which may be completed by force account methods by the department.
- II. Repair projects, which may be completed by force account methods by the department on dams and property associated with and contiguous to state-owned dam sites, as well as noncontiguous property, such as rainfall and stream gages, that is essential to the safe operation of the dam, approved for acquisition by the legislature with the approval of governor and council.
- III. Reconstruction projects, which shall be completed by contract construction or force account on dams and property associated with and contiguous to state-owned dam sites, as well as noncontiguous property, such as rainfall and stream gages, that is essential to the safe operation of the dam, approved for acquisition by the legislature with the approval of governor and council.

**Source.** 1989, 339:1. 1991, 368:3. 1993, 189:4. 1996, 228:107. 2001, 138:5, eff. Aug. 28, 2001.

## **Dams in Disrepair; Acquisition by Municipality**

### **Section 482:58**

#### **482:58 Definitions.** –

As used in this subdivision:

- I. "Local legislative body" means one of the following basic forms of government utilized by a municipality:
  - (a) Council, whether city or town.
  - (b) Mayor-council.
  - (c) Mayor-board of aldermen.
  - (d) Village district commissioners in a village district or precinct.
  - (e) Board of selectmen in a town.
- II. "Municipality" or "municipal" means and includes cities, towns and village water districts.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:59**

**482:59 Duty of Owner.** – [Repealed 1997, 178:5, eff. Aug. 16, 1997.]

### **Section 482:60**

**482:60 Municipalities May Petition.** – The local governing body of any municipality in which the whole or a part of a dam is located, if it has reason to believe the dam may be in disrepair, may petition the department for an investigation to determine whether such dam is in disrepair. The local governing body shall so petition the department when requested to do so by 25 taxpayers of such municipality.

**Source.** 1989, 339:1. 1993, 12:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:61**

**482:61 Department Action.** – The department, upon its own motion or upon the filing of a petition pursuant to RSA 482:60, shall notify the owner of such dam of the filing of said petition and set a time and place for a hearing to determine whether such dam is in disrepair. Said notice shall be given at least 21 days before said hearing and may be given in hand to the owner or sent to him by registered mail, or, at the option of the department, said notice may be given by publication once each week for 3 successive weeks in some newspaper of general circulation in the county in which the dam or any part thereof is located. If notice is given by publication, the first publication shall appear at least 21 days prior to the date of the hearing. The department shall file a copy of such notice in the registry of deeds in each county in which the dam is located.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:62**

**482:62 Inspection.** – Upon receipt of a petition under RSA 482:60, the department may, either before or after said hearing, cause an inspection of said dam to be made by a competent person, who may be one of its employees.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:63**

**482:63 Findings of Disrepair.** – Pursuant to notice given by the department, it shall hold a public hearing and find, upon evidence furnished by its employees or others, whether said dam is in disrepair. If the department finds such dam in disrepair, it shall request the dam owner to make the requisite repairs or reconstruction within a period to be fixed by such request.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:64**

**482:64 Municipality May Take Dam.** – If the owner shall fail to comply with such request, a municipality in which all or a portion of such dam is located may take, by eminent domain proceedings before the department as provided in this subdivision, such dam and other real estate, franchises, easements, flowage and other property, wherever located, necessary or desirable in the opinion of the department to enable the municipality to construct, maintain, repair, own and operate the same. Eminent domain proceedings may not be taken by a municipality pending an appeal and final determination of such appeal.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:65**

**482:65 Voters to Authorize Taking.** – Eminent domain proceedings shall not be taken under this subdivision unless authorized by a vote of a majority of all voters present and voting at an annual or special meeting of the town or village water district or by a 2/3 vote of all elected members of the town council. A city desiring to initiate eminent domain proceedings under this subdivision shall act through its mayor, whose action shall be authorized by a resolution of the city councils, passed by at least 2/3 of all the members elected to each branch of the councils. All other action under this subdivision by a city shall be by the mayor when authorized by a resolution of the city councils, passed by a majority of the members elected to each branch of the councils.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:66**

**482:66 Special Town Meetings, Town Council Meetings.** – A special town or village water district meeting or town council meeting to authorize action under this subdivision may be called by the local legislative body by posting or causing to be posted a written or printed copy of the warrant noticing such meeting at the place of meeting and at 2 other public places in the town at least 7 days prior to holding the meeting, including the day of holding such meeting. The local legislative body shall leave, on or before the day of the meeting, a copy of such warrant with the town clerk, who shall record it. Upon petition of 25 taxpayers, the local legislative body shall call a special town meeting or town council meeting to consider action under this subdivision.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:67**

**482:67 Petition for Taking.** – If, within 2 years from the finding by the department that a dam is in disrepair, a municipality in which a portion of such dam is located desires to take such property by eminent domain proceedings, the local legislative body may in writing so petition the department. Such petition shall contain a statement of the following information, if applicable: the amount of the municipality's indebtedness and its last assessed valuation, information as to the municipality's proposed payment method for said property, a certified copy of the vote of the town authorizing the taking of such property, a copy of the warrant calling the meeting at which such vote was passed, a statement of the number of legal voters, the number present and voting for and against the proposal, a description of the property sought to be acquired and its owners as appearing on the tax records of any municipality, and a list of such other persons believed by the local legislative body to own property that may be flowed or affected as a result of maintaining said dam pursuant to findings and orders of the department made under RSA 482:63.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:68**

**482:68 Notice.** – Upon receipt of the petition provided for in RSA 482:67, the department shall notify the owners of property likely to be affected by such proceedings by publication as provided in RSA 482:61, and set a time and place for a hearing to determine what property shall be taken by the municipality in order for it to acquire the dam and affected property. Such notice shall be considered adequate as to all persons affected by these and all subsequent proceedings before the department to acquire the said property.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:69**

**482:69 Hearing and Findings.** – After said notice, a public hearing shall be held and the department shall find, upon evidence furnished by its employees or others at the hearing, what property and rights are reasonably required by the municipality for the acquisition of the dam, other real estate, franchises, easements and other

property necessary or desirable to enable the municipality to construct, maintain, repair, own and operate the dam so it may not be or become a dam in disrepair, and if the department shall find that payment for said property and rights will not cause the debt of said municipality as authorized by law to be exceeded, it shall determine the compensation to be paid for said property and rights, and render judgment accordingly.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:70**

**482:70 Appeal on Damages.** – Any party aggrieved by an order of the department awarding damages may, within 60 days after entry of the order, file a petition in the superior court of the county in which the land is wholly or partially located to have the damages assessed by a jury, upon which petition notice shall be given, and the court shall assess such damages by jury. If the result of an appeal is to change the award of damages in favor of the appellant, he shall recover costs; otherwise, he shall pay costs.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:71**

**482:71 Guardian Ad Litem; Fees.** – If an owner or the owners of real estate, franchises, easements and other property affected by proceedings under this subdivision is under any legal disability and is not under guardianship in this state or his residence is unknown or uncertain, the department shall upon application by the municipality, appoint a guardian ad litem, who shall represent the owner in the proceedings. The department shall determine and fix the amount due to any guardian appointed by it for services and disbursements in connection with any proceedings under this subdivision, and the portion of such fee that justice requires shall be payable out of any award that may be made for any land or right of the ward that may be taken.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:72**

**482:72 Municipality Required to Pay Judgment.** – A municipality shall expend such sums as may be necessary to satisfy any judgment of the department pursuant to RSA 482:69 and any appeal from such judgment and such sums may be taken from moneys (a) raised from the sale of bonds, sufficient authority for the issuance of which shall be the affirmative vote passed at the meeting referred to in RSA 482:65; (b) in the hands of the town treasurer not appropriated or held for a purpose not inconsistent with such payment; (c) or voted the purpose at any regular or special town meeting or special meeting of a town council.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:73**

**482:73 Employment of Assistants.** – A municipality acting through its local legislative body may employ engineers, counsel and others and defray other expenses incident to proceedings under this subdivision.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 482:74**

**482:74 Access to Dam.** – Access to a dam and adjacent property may be had at all times by representatives of the department or a municipality to implement the purposes and intent of this subdivision.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

# Soil Conservation District Projects

## Section 482:75

**482:75 Jointly Sponsored Projects.** – In order for the state of New Hampshire to cooperate fully with federal agencies in watershed management as provided for under Public Law 566, as amended, all jointly sponsored soil conservation districts projects for watershed protection, flood prevention, and water management are declared to be projects under the provisions of this chapter except that compliance with the provisions of RSA 481:8 shall not be required.

**Source.** 1989, 339:1. 2009, 112:10, eff. Aug. 14, 2009.

## Section 482:76

**482:76 Projects Tax Exempt.** – All property and rights acquired by the department for projects in cooperation with federal agencies as provided for under Public Law 566 and pursuant to RSA 482:75 which are nonrevenue-producing shall be exempt from all taxation and shall not be subject to the provisions of RSA 481:14.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## Section 482:77

### **482:77 Small-Watershed Projects.** –

I. The department is authorized to cooperate with cities and towns in the development of small-watershed projects as planned by the Natural Resources Conservation Service of the United States Department of Agriculture and local sponsoring organizations, under the provisions of Public Law 566, as amended, and under RSA 482:75. Notwithstanding any other provision of law, the exercise of eminent domain may not be applied on any lands needed to allow the enlarging of a dam beyond the height or length needed solely for flood control purposes.

II. Financial aid from the state for recreational purposes at such a project is contingent upon approval by the state soil conservation committee of a land use plan for proposed public development at each site under consideration. The state soil conservation committee shall review each site and shall assist the municipalities, local sponsoring organizations, and land owners in preparing a general land use plan for each site. The committee shall also assist the municipalities in the preparation of mutually acceptable applicable ordinances to which such a general land use plan shall conform.

III. A small-watershed project fund is created to receive state and local municipal contributions for payment of the cost of acquiring additional land and right-of-ways and for construction costs for recreation purposes to be included in the structures and appurtenances on the United States Natural Resources Conservation Service projects. If the town joining in the project has matched the funds appropriated for the project by the state and has deposited the matching funds into the small-watershed project fund, the department is authorized to draw money from this fund for the purposes set forth in this section, subject to the conditions upon spending the matching funds set forth in the statute making the appropriation.

**Source.** 1989, 339:1. 1995, 206:2. 1996, 228:106, eff. July 1, 1996.

## Section 482:78

**482:78 Replacement of Highways.** – If it becomes necessary to change the elevation of or to relocate a highway in the primary or secondary state highway system because of the construction of a dam or the impounding of water by a dam under a small-watershed project, the cost of the change of elevation or the relocation of the highway to be paid by the sponsoring agency is the cost that would be in excess of the estimated normal replacement of that highway as estimated by the commissioner of transportation. The



department of transportation shall pay the costs of the change in an amount equal to the estimated costs of the normal replacement of the highway; provided, however, that all expenditures from the highway fund required as provided in this section shall be approved by the general court as a special appropriation in the budget of the department of transportation.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Lake Levels Investigation and Proceedings**

### **Section 482:79**

**482:79 Investigation of Levels of Inland Waters.** – The department may, upon its own motion or at the request of the attorney general or upon complaint of not less than 10 owners of property on any inland public water in the state, make a preliminary investigation of conditions affecting the use and enjoyment of any such public water whenever it shall be of the opinion that such investigation would be in the public interest. If, as a result of any such preliminary investigation, it shall appear to the department that the management and control of any outlet of any such public water and the connected instrumentalities are carried on or used in such manner that the value of shore property above or riparian rights below such outlet or the enjoyment of such water by the public is seriously and adversely affected, it may make further investigation with a view to ascertaining the respective rights of all interested parties, including the public. If, as a result of such further investigation after public hearing, the department shall be of the opinion that such management and control is lawful, but that changes in the manner of the exercise of the right of management and control would be of benefit to others without undue injury to the owner of the outlet, it shall direct such changes as in its opinion would be of benefit to the public and private interests concerned.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:79-a**

**482:79-a Administrative Fine.** – [Repealed 2008, 272:6, II, eff. Jan. 1, 2009.]

### **Section 482:80**

**482:80 Report to Governor and Council.** – If, as a result of such further investigation, the department shall be of the opinion that such management and control of the outlet and the connected instrumentalities is lawful, and that changes in such management and control in the public interest would deprive the owner of the outlet or others of rights to which they are lawfully entitled and that such changes, notwithstanding such deprivation, would be for the public interest, it may estimate all damages which would be occasioned by such changes and all other connected costs and report its findings to the governor and council.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 482:81**

**482:81 Procedure When Use Unlawful.** – If, upon complaint of not less than 10 owners of property on any inland public water in the state, the department determines that a hearing is required, notice shall be provided to the owner of the outlet of such water. If personal service is impractical in the opinion of the department, notice may be by publication, and such other notice, by publication or otherwise, as the department may order. If after notice and a hearing, the department determines that the management and control of any such outlet or the connected instrumentalities is unlawful and contrary to the public interest, it shall report its findings to the attorney general. Upon receipt of such findings, the attorney general in the name of the state may institute

appropriate proceedings in equity in the superior court, and the court shall make such orders as may be necessary to protect the rights of the parties.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:82**

**482:82 Gifts or Grants to the State.** – When in the opinion of the department it is in the public interest for the state to accept gifts or grants of real estate, or any interest in real estate, contiguous to inland public waters, rivers or streams, the department shall recommend such acceptance to the governor and council who may, by resolution, accept the same in the name of the state.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:83**

**482:83 Costs of Hearing.** – The petitioners for a hearing pursuant to the provisions of RSA 482:79 shall make a deposit to the department of \$100 with each such petition. This payment shall be for expenses of publication, mailing, and posting of notices by the department and for the expenses of hiring a hearing site if necessary for hearings held during normal business hours in Concord. For hearings held outside of Concord or after normal business hours or both, the payment shall also cover expenses of the hearing personnel including per diems for personnel of the department. If said expenses amount to more than \$100, the department shall require the petitioners to pay the additional amount before it renders its decision.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

# **Stream and Lake Gauging**

## **Section 482:84**

**482:84 Official Gauge for Lake Winnepesaukee.** – The gauging station maintained by the United States Geological Survey at Endicott Park at the Weirs in Laconia, New Hampshire, located approximately 500 feet northwesterly from the northerly end of the channel connecting Lake Winnepesaukee and Paugus Bay is established as the official gauging station to measure the level of water in Lake Winnepesaukee. The total quantity of water drawn from Lake Winnepesaukee during the 7 days in any week between June 1 and October 15 of any year shall not exceed the equivalent of 250 cubic feet for each second of time during said week when the gauge reading (making due allowance for seiche and wind action) on said gauging station is at or below 502.4 feet above mean sea level as shown by said gauging station; provided, however, that upon the finding of an emergency by the department, the department may permit drafts of water in excess of said amount during said period for such time and in such amounts as the department may determine. Upon complaint of not less than 10 owners of property on Lake Winnepesaukee, a hearing may be held before the department and proceedings instituted as provided in RSA 482:81.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:85**

**482:85 Stream Flow Gauging Stations.** – The department shall cooperate with the United States Geological Survey in the establishment and maintenance of stream flow gauging stations on streams in this state for the purpose of providing the people and industries of this state with information which will assist them in the determination of plans for flood prevention and the conservation of natural water resources of the state for water supply, recreation, sanitation, and power production.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## Administration, Procedure, and Appeals

### Section 482:86

**482:86 Disqualification.** – No member of the department shall sit upon the hearing of any question which the department is to decide in a quasi-judicial capacity who would be disqualified for any cause, except knowledge of the facts involved gained in the performance of his official duties, to act as a juror upon the trial of the same matter in an action at law.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### Section 482:87

**482:87 Administrative Powers.** – The department shall have the power to issue permits and to make orders under this chapter, conduct hearings, subpoena and examine under oath owners of dams, their books, records, documents, correspondence, and accounts, and to subpoena any other person it deems necessary to implement the purposes and intent of this chapter. The commissioner shall adopt under RSA 541-A and enforce such reasonable rules as are deemed necessary to implement the provisions of this chapter.

Source. 1989, 339:1. 1995, 217:10, eff. Aug. 11, 1995.

### Section 482:88

**482:88 Operation of State Owned Dams by Cities and Towns.** – The department is authorized to require cities and towns that operate state-owned dams to do so in accordance with the provisions of this chapter and those of RSA 481 and pursuant to rules adopted by the commissioner under RSA 541-A, upon the request of the governing body of a city or town. The operation of a dam by a city or town shall be supervised by a municipal employee who shall be designated by the department to act as its agent, in accordance with a mutually acceptable operating agreement.

Source. 1989, 339:1. 1996, 228:62, eff. July 1, 1996.

### Section 482:89

#### **482:89 Penalties.** –

I. The following shall constitute a violation of this chapter, with each day of noncompliance constituting a separate violation:

- (a) Failure to comply with any provision of this chapter, any rule adopted to implement this chapter, or any permit issued pursuant to this chapter;
- (b) Failure to comply with a written order or directive issued by the department under this chapter;
- (c) Failure to answer a subpoena issued under this chapter or to allow the department to examine books, records, documents, correspondence, and accounts relative to dams or to testify before the department as required by this chapter;
- (d) Misrepresentation by any person of a material fact made in connection with any activity regulated or prohibited by this chapter; and
- (e) Failure to comply with an emergency directive of the department under RSA 482:4.

II. Any person who violates this chapter as specified in paragraph I, and any person who purchases property affected by a violation of this chapter who knew or had reason to know of the violation prior to or at the time of purchase, shall be liable for remediation or restoration of the property affected.

III. Any person who knowingly violates this chapter as specified in paragraph I shall be guilty of a misdemeanor

if a natural person, or guilty of a felony if any other person, and, notwithstanding RSA 651:2, may, in addition to any sentence of imprisonment, probation, or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. Each day of violation shall constitute a separate offense.

IV. Upon petition of the attorney general, the superior court may levy upon any person violating this chapter, as specified in paragraph I, a civil penalty in an amount not to exceed \$20,000 for each day of each continuing violation. Upon petition of the attorney general, the superior court or any justice of such court may enjoin any act in violation of this chapter as specified in paragraph I.

V. The commissioner, after notice and hearing pursuant to RSA 541-A, may impose upon any person who violates any provision of this chapter, as specified in paragraph I, an administrative fine not to exceed \$2,000 for each violation in addition to other remedies and penalties provided under this chapter. The department shall commence a proceeding under this paragraph against any person who does not respond within 45 days of receipt of a written order, directive, or any notice of needed maintenance, repair, or reconstruction issued by the department. Rehearings and appeals under this paragraph shall be in accordance with RSA 541. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violation of this chapter as specified in paragraph I; and

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

VI. The proceeds of any penalties levied pursuant to paragraphs III through V shall be deposited into the dam maintenance revolving loan fund established in RSA 482:55-a.

VII. The provisions of RSA 482:89 shall not apply to actions that are subject to the Federal Power Act (16 U.S.C. sections 791a-825r).

VIII. In determining penalties, the department shall and the superior court may take into consideration all relevant circumstances, including the degree of noncompliance, the extent of harm caused by the violation, the nature and persistence of the violation, the time and cost associated with the investigation by the state, and the economic impact of the penalty on the liable person.

**Source.** 1989, 339:1. 1996, 228:63, 106, 110. 1999, 125:1. 2008, 272:3, eff. Jan. 1, 2009.

## **Section 482:90**

**482:90 Conferences Authorized.** – The department is authorized to confer and agree with legally constituted similar authorities of other states or agencies of the federal government.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:91**

### **482:91 Interstate Compacts.** –

I. Upon the recommendation of the department, the governor and council are authorized, in the name of and on behalf of the state, to enter into agreements or compacts with any one or more of the New England states or an adjoining country as the governor and council may deem to be in the best interests of this state. Such agreements and compacts shall be for the purposes of promoting health, welfare and public safety by conserving and regulating the waters in all rivers or streams whose drainage basins or any portion of a drainage basin lie within this state as to:

(a) Flow and diversion.

(b) Lessening flood damage.

(c) Removing or preventing sources of pollution.

(d) The rights of other states or adjoining country in the waters.

II. The governor and council may enter into compacts and agreements if the consent of the United States Congress, if required, has been or shall be given to the making of the agreements or compacts.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 482:92**

**482:92 Interstate Commerce.** – Nothing in this chapter shall be construed as applying to interstate or foreign commerce except as may be permitted by the federal constitution and laws enacted under it.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 482:93**

**482:93 Legislative Dam Management Review Committee.** – [Repealed 2010, 368:1(33), eff. Dec. 31, 2010.]