

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
H.P. 350 - L.D. 531

An Act to Establish the Toddy Pond Watershed Management District

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the current owner of the dam on Toddy Pond has petitioned the Department of Environmental Protection for release from ownership of that dam and all property rights necessary to maintain and operate that dam under the Maine Revised Statutes, Title 38, chapter 5, subchapter 1, article 6; and

Whereas, pursuant to Title 38, chapter 5, subchapter 1, article 6, a dam owner petitioning for release from ownership is required to consult with the persons listed in Title 38, section 902, subsection 3 to determine if any of those persons wish to assume ownership of the dam; and

Whereas, the municipalities in which a dam is located are included in the mandatory consultation procedure under Title 38, section 902, and the consultation period for a municipality is significantly time-limited to 180 days after the date a petition for release from dam ownership is filed by the dam owner, with the opportunity for one extension of 180 days following that initial period; and

Whereas, the watershed management district established in this legislation is designed to assume ownership of the dam on Toddy Pond and to subsequently maintain and operate that dam, including coordinating water level management, on Toddy Pond; and

Whereas, the watershed management district must therefore be established prior to the expiration of the statutory period in Title 38, section 902 to effectuate and implement the municipal consultation procedure; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. District established; general provisions. The Toddy Pond Watershed Management District, referred to in this Act as "the district," is established as a quasi-municipal corporation, incorporated for the purposes described in this Act.

For the purposes of this Act, "participating town" means the Town of Blue Hill, the Town of Orland, the Town of Penobscot or the Town of Surry, except that any town whose legal voters do not approve participation in the district by a majority vote at referendum pursuant to section 8, and any town that has withdrawn from the district pursuant to section 6, may not be considered a participating town for the purposes of this Act.

1. Tax exemption. The property, both real and personal, rights and franchises of the district held within the boundaries of the Town of Blue Hill, the Town of Orland, the Town of Penobscot and the Town of Surry are forever exempt from taxation.

2. Liability. The district is a governmental entity for the purposes of the Maine Tort Claims Act.

3. Funding eligibility. The district qualifies for any grants, loans or other funding in the same manner as a municipality.

4. Watershed district. The district is eligible for state agency assistance for watershed districts as provided in the Maine Revised Statutes, Title 38, section 2012.

5. Fiscal year. The fiscal year of the district is from July 1st to June 30th of each year.

Sec. 2. Governance. The affairs of the district are managed by a board of trustees, referred to in this Act as "the board," made up of a combination of trustees appointed by the municipal officers of the participating towns and trustees elected by the owners of the waterfront properties abutting Toddy Pond, referred to in this Act as "the waterfront property owners."

1. Membership. Except as otherwise provided in this section, the board consists of 9 trustees as follows:

- A. Two trustees appointed by the municipal officers of the Town of Orland;
- B. One trustee appointed by the municipal officers of the Town of Penobscot;
- C. One trustee appointed by the municipal officers of the Town of Surry;
- D. One trustee appointed by the municipal officers of the Town of Blue Hill; and
- E. Four trustees elected by the waterfront property owners as provided in this section.

If the legal voters of any town do not approve participation in the district by a majority vote at referendum pursuant to section 8, the trustees under this section must be adjusted in the same manner as under subsection 7 as if the town was a participating town that had withdrawn from the district in accordance with section 6.

2. Nominations for election. Candidates for election by the waterfront property owners must be nominated by a lake or pond association representing at least 20% of the waterfront properties abutting Toddy Pond. If no such association is in existence, the nomination process is as adopted by the board.

3. Conduct of elections. Upon the establishment of the district, the trustees appointed by the participating towns shall conduct the initial election of the trustees for the waterfront property owners. The full board shall conduct elections subsequent to the initial election.

The election ballot must list the names of each trustee candidate and whether the candidates are seeking a full term or to complete the remaining term for a vacant board seat and must include any write-in candidates. Regardless of the number of actual or beneficial owners of a waterfront property, a duly authorized representative of each waterfront property owner may cast one vote for each open board seat listed on the election ballot. The candidate or, in the event that more than one board seat is listed on the election ballot, candidates who receive the most votes cast must be declared elected.

4. Staggered terms. The initial terms of the trustees appointed by the participating towns and the trustees for the waterfront property owners must be staggered, as determined by lot, with as closely as possible equal numbers of trustees serving initial terms of one year, 2 years and 3 years. Subsequently appointed or elected trustees serve 3-year terms.

5. Vacancies. In the event a board seat occupied by a trustee appointed by the municipal officers of a participating town under subsection 1 becomes vacant, the municipal officers of the participating town that made the appointment to that seat may appoint a replacement trustee to complete the term for that seat. In the event a board seat occupied by a trustee elected by the waterfront property owners under this section becomes vacant, a lake or pond association representing the greatest percentage of waterfront properties abutting Toddy Pond may appoint an interim trustee to that seat until a replacement trustee is elected at the next regular annual election of trustees. If the association fails to appoint an interim trustee or if no such association is in existence, the seat remains vacant until the next regular annual election.

6. Quorum; voting. A majority of the trustees appointed and elected to the board must be present at a meeting of the board to constitute a quorum. The board may take an action requiring a vote only upon the affirmative vote of:

- A. A majority of the trustees appointed and elected, regardless of the number of trustees present and voting at a meeting; and
- B. At least one trustee appointed by the participating towns and at least one trustee elected by the waterfront property owners.

7. Effect of withdrawal. If a participating town withdraws from the district in accordance with section 6, the trustees appointed to represent that town must be removed from the board, and the number of trustees for the waterfront property owners must be reduced as necessary to ensure that, of the total number of trustees remaining, a majority are town-appointed trustees, except that:

- A. The number of trustees for the Town of Orland may not be less than one;
- B. The number of trustees for the waterfront property owners may not be less than 2; and
- C. If all participating towns have withdrawn from the district, the number of trustees for the waterfront property owners must be 3, with any additional board seats for the waterfront property owners to be filled in the same manner as a vacancy for a board seat for the waterfront property owners under subsection 5.

Any required reduction in the number of trustees for the Town of Orland or for the waterfront property owners pursuant to this section must be determined by lot.

Sec. 3. Powers; responsibilities. The district may sue; make contracts; apply for and accept grant or loan funds; accept gifts; purchase, lease, devise or otherwise acquire, hold or dispose of real or personal property; disburse money; contract debt; adopt rules; and do such other acts as necessary to carry out the powers and responsibilities described in this section.

1. Powers. The district may:

- A. Develop operational rules for the management of the district, including developing topic-specific committees with outside experts when necessary;
- B. Deliver an annual request to each participating town, subject to voter approval, to fund a portion of the district's operating and other costs;
- C. Levy and collect an assessment on the waterfront property owners to fund a portion of the district's operating and other costs and establish a lien on a waterfront property in the event the waterfront property owner does not pay in full the assessed amount by the date the payment is due; and
- D. Enter into cooperative agreements with other watershed management districts, municipalities and entities for the purposes of planning, operations and maintenance and watershed improvement and for other purposes determined by the district.

2. Responsibilities. The district is responsible for:

- A. Acquiring ownership of, owning, maintaining and operating the dam, the land under the dam, the equipment and other personal property necessary to maintain and operate the dam and flowage and access rights associated with the dam on Toddy Pond, including general operations, managing water levels and flow, managing inspections, planning for upgrades or repairs and other dam management activities;
- B. Preparing an annual operating and capital budget as described in this Act;
- C. Holding at least one public meeting to discuss the district's annual proposed budget as described in this Act, which must be held at least 2 weeks prior to a vote by the legislative body of a participating town on an article requesting the annual municipal contribution;
- D. Conducting elections of trustees for the waterfront property owners;
- E. Electing trustees as officers of the board;
- F. Administering the affairs of the district, including, but not limited to, financial management activities, record keeping, public communications and contract management; and
- G. Proactively assessing watershed improvements and developing policies and practices to enhance the Toddy Pond watershed, including seeking funding opportunities for watershed improvements such as fish passage improvements, courtesy boat inspections and water quality and invasive species monitoring activities.

Sec. 4. Annual operating and capital budget. The board shall develop an annual operating budget, which must include proposed appropriations into reserves for any capital expenditure purpose or capital expenditure appropriations as described in this section.

1. Budget hearing; board approval. Prior to January 15th of each year and with sufficient time to incorporate any public input, the board shall hold a public budget hearing. At the budget hearing, the board shall explain the proposed budget, and residents of the participating towns and the waterfront property owners must be given an opportunity to be heard. At the budget hearing, only those items concerning the expenses necessary to operate the district, appropriations for a reserve fund and capital expenditure are subject to public input. A proposed annual budget may not be finalized and submitted for appropriation to the participating towns unless approved by the board as follows:

A. A proposed annual budget of less than \$100,000 may be finalized and approved only by the affirmative vote of a majority of the trustees appointed and elected to the board, regardless of the number of trustees present and voting, if at least one such affirmative vote is provided by a trustee appointed by the participating towns under section 2, subsection 1 and at least one such affirmative vote is provided by a trustee elected by the waterfront property owners under section 2; and

B. A proposed annual budget of \$100,000 or more may be finalized and approved only by the affirmative vote of 2/3 of the trustees appointed and elected to the board, regardless of the number of trustees present and voting.

The \$100,000 budget figure in paragraphs A and B must be adjusted annually for cumulative price inflation since December 31, 2024, based on the change in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Northeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics or, if that statistic is no longer published or available, by an alternative measure of price inflation as determined by the board.

The board shall ensure that the final annual budget is finalized for approval no later than January 15th.

2. Budget approval process. Upon finalization of the annual budget by the board, each participating town, for consideration at a town meeting, shall incorporate a warrant article as described in this section to allow the voters of the town to approve or reject the budget. During the initial funding period for the district, any requests for appropriation from the district may include only those amounts in excess of the amounts already appropriated by a participating town at the time the district was formed.

The district shall provide information in print or electronic format regarding the annual budget and appropriation request to each participating town prior to and at the town's annual town meeting, which must include the total amounts proposed by the district for each cost center summary budget category, the amount approved by the board after public input gathered at the budget hearing and a summary of the total authorized expenditures for the district.

The board shall prepare the warrant article for this purpose and shall deliver the article to the municipal clerk of each participating town no later than February 1st of each year. The warrant article must be in substantially the following form:

"Do you favor the town raising and appropriating from property tax \$
(insert amount) to pay the town's municipal contribution to the Toddy Pond
Watershed Management District?"

3. Failure to approve municipal contribution. Each participating town's vote on the warrant article determines that town's obligation to pay the municipal contribution for the budgeted fiscal year. If a town fails to appropriate funds for its municipal contribution, the amount not appropriated must be included in the assessment on the waterfront property owners whose property is located in that town.

Sec. 5. Contributions; assessments. The annual budget for the district as described in this Act must reflect all expected expenditures and additions to capital reserves, net of any grants, donations, loans or other anticipated sources of funds. To the extent that additional funds are required to balance the budget, referred to in this Act as "the aggregate funds required," the participating towns and the waterfront property owners shall provide funding for the aggregate funds required as follows.

1. Municipal contributions. If approved by the voters of the participating towns pursuant to section 4, the participating towns shall provide funding for 50% of the aggregate funds required, which must be determined by the board in the manner described in section 4 and which must be apportioned amongst the participating towns based on the following percentages: Town of Blue Hill, 6%; Town of Orland, 43%; Town of Penobscot, 24%; and Town of Surry, 27%. A participating town's appropriated municipal contribution must be paid to the district prior to August 1st of each year.

2. Waterfront property owners. The waterfront property owners shall provide funding for the aggregate funds required that are not provided pursuant to subsection 1, which must be determined by the board as described in section 4. If a participating town, or a town that has not voted to participate in the district or has withdrawn from the district, fails to appropriate funds for its municipal contribution, the amount not appropriated must be included in the assessment on the waterfront property owners whose property is located in that town.

A. Each waterfront property owner shall pay an assessment proportionate to the amount of shoreline frontage along Toddy Pond on that waterfront property owner's lot or parcel. For the purposes of calculating this assessment, the shoreline frontage is the amount used for the purposes of property tax assessment, up to a maximum of 250 feet of shoreline frontage, and a lot or parcel with more than 250 feet of shoreline frontage must be deemed to have only 250 feet of shoreline frontage.

B. The district shall mail an invoice for the assessment amount due to each waterfront property owner on a schedule and with a specified payment due date as determined by the board. Failure to pay the assessment amount by the specified payment due date incurs interest as determined by the board in a manner consistent with the Maine Revised Statutes, Title 36, section 505. The district may place a lien on the lot or parcel of a waterfront property owner that fails to pay the assessment amount by the specified payment due date.

Sec. 6. Withdrawal; dissolution. The legislative body of a participating town may by majority vote elect to withdraw from the district, and the board must approve the withdrawal, subject to conditions and requirements reasonably necessary for the continued operation of the district as may be directed by the board. If a participating town fails to appropriate funds for its municipal contribution in accordance with the requirements of this Act for 2 consecutive years, the town is considered to have withdrawn from the district, subject to conditions and requirements reasonably necessary for the continued operation of

the district as may be directed by the board. The district may be dissolved upon the disposition of all of its assets and settlement of any liabilities and by an affirmative vote on dissolution by a majority of the trustees of the board.

Sec. 7. Authorized activities prior to referendum. Notwithstanding the referendum requirement of section 8, the municipal officers of the Town of Blue Hill, the Town of Orland, the Town of Penobscot and the Town of Surry shall prepare an estimated budget for the district for its first year of operation and shall determine the aggregate funds required for that year. The municipal officers of the Town of Blue Hill, the Town of Orland, the Town of Penobscot and the Town of Surry shall determine the required municipal contributions for each town, which must represent 50% of those aggregate funds required, and which must be apportioned amongst the towns based on the following percentages: Town of Blue Hill, 6%; Town of Orland, 43%; Town of Penobscot, 24%; and Town of Surry, 27%. The municipal contribution amount determined for each town pursuant to this section must be used for the purposes of the referendum required in section 8.

Sec. 8. Emergency clause; referendum; effective date. In view of the emergency cited in the preamble, this Act takes effect when approved only for the purposes of allowing the municipal officers of the Town of Blue Hill, the Town of Orland, the Town of Penobscot and the Town of Surry to prepare an estimated budget and determine the aggregate funds required and required municipal contribution pursuant to section 7 and for permitting the Act's submission to the legal voters of the Town of Blue Hill, the Town of Orland, the Town of Penobscot and the Town of Surry at a referendum called for that purpose and held after June 1, 2025 but within 2 years after the effective date of this Act. Each referendum must be called by the municipal officers of the respective towns and must be held at the regular voting places. The referendum must be called, advertised and conducted according to the law relating to municipal elections. For the purpose of registration of voters, the registrars of voters must be in session the regular workday preceding the referendum. The subject matter of this Act must be reduced to a question in substantially the following form:

"Do you favor the establishment of and the town's participation in the Toddy Pond Watershed Management District and the appropriation of \$ (insert amount) to provide the town's share of the estimated budget for the first year of operation of the Toddy Pond Watershed Management District?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion of the same.

The results must be declared by the municipal officers of the Town of Blue Hill, the Town of Orland, the Town of Penobscot and the Town of Surry and due certificate of the results filed by the clerk with the Secretary of State.

This Act takes effect for all other purposes immediately upon its approval by a majority of the legal voters of one or more of the towns voting at the referendum. A town that fails to achieve the necessary approval in any referendum pursuant to this section may not be considered a participating town for the purposes of this Act but is not prohibited from conducting subsequent referenda consistent with this section as long as the referenda are held within 2 years after the effective date of this Act.

For any period that a town is not considered a participating town for the purposes of this Act as a result of a failure to achieve the necessary approval in any referendum pursuant to this section, the municipal contribution required for that town must be assessed on the waterfront property owners whose property is located in that town in accordance with section 5, subsection 2.