

HOUSE No. 4345

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 30, 2012.

The committee on Ways and Means, to whom was referred the Senate Bill further regulating dam safety, repair and removal (Senate, No. 1985, amended), reports recommending that the same ought to pass with an amendment striking all after the enacting clause and inserting in place thereof the text contained in House document numbered 4345.

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve
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By striking out all after the enacting clause and inserting in place thereof the following:—

1 SECTION 1. Chapter 21 of the General Laws is hereby amended by adding the following 4
2 sections:-

3 Section 64. The commissioner of conservation and recreation, in conjunction with the
4 commissioner of fish and game, the division of fisheries and wildlife, and the riverways
5 program, or any successor agencies, shall annually, not later than December 31, submit a detailed
6 report on all dams, whether on public or private property, to the joint committee on environment,
7 natural resources and agriculture and to the senate and house committees on ways and means.

8 The report shall include (1) a comprehensive list of each person, agency, municipality or entity
9 that owns and operates a dam and the location of each dam where such ownership or operation is
10 registered with the department; (2) a list of specific owners who have failed to meet regulatory
11 requirements including, but not limited to, registration and inspection requirements; (3) the
12 hazard classification status of any dams that pose a threat to public health, safety, welfare,
13 property or the environment and when or whether any such dam has been repaired; and (4) a
14 comprehensive list of dams that are abandoned as defined in section 44 of chapter 253.

15 Section 65. (a) As used in this section and section 66, the following definitions shall, unless the
16 context clearly require otherwise, have the following meanings:-

17 “High hazard dam”, a dam located where structural failure will likely cause loss of life and
18 serious damage to homes, industrial or commercial facilities, essential public utilities, main
19 highways or railroads.

20 “Significant hazard dam”, a dam located where structural failure may cause loss of life and
21 damage to homes, industrial and commercial facilities, secondary highways or railroads or cause
22 interruption of use of service of relatively important facilities.

23 “Low hazard dam”, a dam located where structural failure may cause minimal property damage
24 and loss of life is not expected.

25 (b) The department shall ensure that emergency action plans shall be developed for all high
26 hazard dams and significant hazard dams, as defined by department regulations. The department
27 shall establish and make available to dam owners an emergency action plan template. The
28 department shall ensure that necessary local and state dam safety officials have immediate access
29 to such plans in the event of a potential dam failure.

30 (c) The department shall develop an inspection schedule to ensure that all high hazard dams are
31 inspected at least every 2 years, all significant hazard dams are inspected at least every 5 years
32 and all low hazard dams are inspected at least every 10 years.

33 (d) The department shall review the hazard classifications of dams at least every 10 years to
34 ensure the accuracy of the dam classification. Requests for review of the hazard classification of
35 a dam shall be made at the expense of the owner of such dam.

36 Section 66. The department of conservation and recreation shall review and approve projects to
37 receive loan funds from the Dam, Sea Wall and Retaining Wall Repair or Removal Fund
38 established under section 2FFFF of chapter 29. The department of conservation and recreation
39 shall promulgate regulations, in consultation with the secretary for administration and finance,
40 identifying the application process and the terms and conditions of approving such loans.
41 Priority in the approval of projects shall be given to: (i) cities, towns and charitable organizations
42 which are tax-exempt under section 501(c)(3) of the internal revenue code; and (ii) projects to
43 repair or remove high hazard and significant hazard dams.

44 Section 67. The department may consult with and receive inspection and other support from the
45 department of fish and game, the division of fisheries and wildlife and the riverways program, or
46 any successor agencies, to accomplish its duties pursuant to sections 64 to 66, inclusive, of this
47 chapter, and sections 44 to 48B, inclusive, of chapter 253.

48 SECTION 2. Chapter 21E of the General Laws is hereby amended by adding the following
49 section:-

50 Section 22. Notwithstanding any general or special law to the contrary, no municipality or
51 public entity shall be liable under this chapter for, or related to, the presence, release or threat of
52 release of oil or any hazardous material related to a dam, as defined in section 44 of chapter 253,
53 that occurred prior to the date a dam was acquired by a municipality or public entity; provided,
54 however, that an activity conducted by a municipality or public entity that involves the
55 management or removal of oil or hazardous material in relation to the management, maintenance
56 or removal of a dam shall be performed in accordance with applicable environmental laws and
57 permits.

58 SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting after section
59 2EEEE the following section:-

60 Section 2FFFF. (a) There shall be established and set upon the books of the commonwealth a
61 separate fund to be known as the Dam, Sea Wall and Retaining Wall Repair or Removal Fund,
62 hereinafter the fund, into which shall be deposited amounts credited to the fund in accordance
63 with section 19 of chapter 29C and any other monies credited or transferred to the fund by the
64 general court or any other source, including, without limitation, federal grants; loan repayments
65 and other payments received by the fund in respect to loans to private dam owners and cities and
66 towns; investment earnings on monies in the fund; and any other amounts required to be credited
67 to the fund by any law, resolution or agreement entered into by the department of conservation
68 and recreation. The fund shall be administered by the secretary of the executive office of
69 environmental affairs. Monies deposited into the fund that are unexpended at the end of the
70 fiscal year shall not revert to the general fund and shall be available for expenditure in the
71 subsequent fiscal year.

72 (b) Amounts credited to the fund shall be used, without further appropriation, to provide grants
73 or loans to local governmental bodies to finance or refinance costs of coastal and inland
74 waterway infrastructure projects including, but not limited to, dams, seawalls, jetties, revetments,
75 retaining walls, levies and other means of flood control. For the purposes of this section, a local
76 governmental body shall include a town, city, district, commission, board and any regional local
77 governmental unit.

78 (c) On or before September 1 of each year, a local governmental body may apply to the secretary
79 of energy and environmental affairs for assistance in financing the cost of a coastal or inland

80 waterway infrastructure project. The secretary shall promulgate rules and regulations for the
81 administration and implementation of this section, including, but not limited to, a priority system
82 for the approval of projects; provided, however, that priority shall be given to projects that have
83 been identified by the United States army corps of engineers as requiring imminent infrastructure
84 improvement. The secretary shall also consider the following factors in developing a priority
85 system; provided, however, that funding shall not be awarded to projects that are privately
86 owned unless the structure in question is abandoned pursuant to section 44 of chapter 253.

87 SECTION 5. The first paragraph of section 8 of chapter 44 of the General Laws, as appearing in
88 the 2010 Official Edition, is hereby further amended by adding the following clause:-

89 (25) For the acquisition of a dam or the removal, repair, reconstruction and improvements to a
90 dam owned by a municipality, as may be necessary to maintain, repair or improve such dam, 40
91 years; provided, however, that this clause shall include dams, as defined in section 44 of chapter
92 253, acquired by gift, purchase, eminent domain under chapter 79, or otherwise, and located
93 within a municipality, including any real property appurtenant thereto, if such dam and any
94 appurtenant real property is not at the time of such acquisition owned or held in trust by the
95 commonwealth.

96 SECTION 6. Section 44 of chapter 253 of the General Laws, as so appearing, is hereby amended
97 by inserting after the introductory paragraph the following definition:-

98 “Abandoned dam”, a dam that has no identifiable owner or a dam in which the owner fails to
99 respond to the owner’s obligations under sections 44 to 48, inclusive, and as a result of which the
100 commissioner has taken emergency action under section 47 and created a lien upon the lots of

101 land on which the dam is situated and upon the buildings and structures on the lots under section
102 48.

103 SECTION 7. Said section 44 of said chapter 253 is hereby further amended by striking out the
104 definition of “Commissioner” and inserting in place thereof the following definition:-

105 “Commissioner”, the commissioner of conservation and recreation or a designee of the
106 commissioner.

107 SECTION 8. Said section 44 of said chapter 253, as so appearing, is hereby further amended by
108 inserting after the word “any”, in line 9, the following word:- man-made.

109 SECTION 9. Said section 44 of said chapter 253, as so appearing, is hereby further amended by
110 striking out, in line 32, the words “environmental management” and inserting in place thereof the
111 following words:- conservation and recreation.

112 SECTION 10. Said section 44 of said chapter 253, as so appearing, is hereby further amended
113 by inserting after the definition of “Owner” the following definition:-

114 “Remove” or “Removal”, the controlled dismantlement or breaching of a dam to the extent that
115 water is not impounded or diverted by the dam and fish passage is no longer impeded and which
116 is dismantled in compliance with applicable laws and regulations; provided, however, that a
117 minimal degree of impoundment needed for agricultural uses or to retain wetlands and open
118 water conditions may be allowed following controlled dismantlement or breaching of a dam.

119 SECTION 11. Section 46 of said chapter 253, as so appearing, is hereby amended by inserting
120 after the word “unsafe”, in line 14, the following words:- or abandoned.

121 SECTION 12. Said section 46 of said chapter 253, as so appearing, is hereby further amended by
122 inserting after the word “condition”, in line 22, the following words:- or to safely remove the
123 dam.

124 SECTION 13. Section 46A of said chapter 253, as so appearing, is hereby amended by inserting
125 after the word “removed”, in line 1, the following word:- , repaired.

126 SECTION 14. Said section 46A of said chapter 253, as so appearing, is hereby further amended
127 by inserting after the word “approving”, in line 5, the following words:- the dam or the safe
128 removal of.

129 SECTION 15. Said section 46A of said chapter 253, as so appearing, is hereby further amended
130 by inserting after the word “property,” in line 7, the following words:- or such terms and
131 conditions, if any, as the commissioner, in consultation with the commissioner of fish and game,
132 deems necessary for the protection of the environment.

133 SECTION 16. Section 47 of said chapter 253, as so appearing, is hereby amended by inserting
134 after the word “condition,” in line 6, the following words:- or remove the dam.

135 SECTION 17. Said section 47 of said chapter 253, as so appearing, is hereby further amended by
136 striking out, in line 22, the figure “\$500” and inserting in place thereof the following figure:-
137 \$5,000.

138 SECTION 18. Paragraph (b) of said section 47 of said chapter 253, as so appearing, is hereby
139 amended by adding the following sentence:-

140 Any fine collected pursuant to this section shall be deposited into the Dam, Sea Wall and
141 Retaining Wall Repair and Removal Fund established under section 2FFFF of chapter 29.

142 SECTION 19. Notwithstanding any general or special law to the contrary, upon receiving a
143 written request from the secretary of administration and finance, the comptroller shall transfer to
144 the the Dam, Sea Wall and Retaining Wall Repair or Removal Fund established pursuant to
145 section 2FFFF of chapter 29, the unexpended balance of a fund, trust fund or other separate
146 account in existence on April 1, 2012, including the balance of any amounts transferred to the
147 Water Pollution Abatement Trust by the state treasurer pursuant to paragraph (a) of section 16 of
148 chapter 275 of the acts of 1989 for the Water Pollution Abatement Revolving Fund, and applied
149 to the trust to make loans to local governmental units pursuant to section 26 of chapter 203 of the
150 acts of 1992, including repayments of such loans and any investment earnings thereon, whether
151 established administratively or by law, and including a separate account established under
152 section 6 of chapter 6A of the General Laws or section 4F of chapter 7 of the General Laws;
153 provided, however, the secretary and comptroller shall report to the house and senate committees
154 on ways and means 45 days prior to any such transfer. The request shall certify that the secretary,
155 in consultation with the comptroller, has determined this balance not to be necessary for the
156 purposes for which it was made available.