

HOUSE No. 4557

Substituted, on motion of Mr. Dempsey of Haverhill, as new text for the Senate Bill further regulating dam safety, repair and removal (Senate, No. 1985, amended). December 28, 2012.

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, on or before June 30, submit a detailed report
6 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; (4) a

14 comprehensive list of dams that are abandoned as defined in section 44 of chapter 253; and (5) a
15 comprehensive list of dams, the existence, condition or operation of which poses a threat to
16 freshwater animal and plant and resident or migratory fish species habitat or movement.

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

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

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

25 ‘Low hazard dam’, a dam located where structural failure may cause minimal property damage
26 and loss of life is not expected.

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

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

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

38 Section 66. The department may consult with and receive inspection and other support from the
39 department of fish and game, the division of fisheries and wildlife and the riverways program, or
40 any successor agencies, to accomplish its duties pursuant to sections 64 and 65 and sections 44 to
41 48B, inclusive, of chapter 253.

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

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

52 SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting after section
53 2HHHH the following section:-

54 Section 2III. (a) There shall be established and set upon the books of the commonwealth a
55 separate fund to be known as the Dam and Sea Wall Repair or Removal Fund, hereinafter the
56 fund, into which shall be deposited amounts credited or transferred to the fund by the general
57 court or any other source, including, without limitation, federal grants; loan repayments;
58 investment earnings on monies in the fund; and any other amounts required to be credited to the
59 fund by operation of law, resolution or agreement entered into by the department of conservation
60 and recreation. The fund shall be administered by the secretary of energy and environmental
61 affairs. Monies deposited into the fund that are unexpended at the end of the fiscal year shall not
62 revert to the general fund and shall be available for expenditure in the subsequent fiscal year.

63 (b) Amounts credited to the fund shall be used, without further appropriation, to provide grants
64 or loans to local governmental bodies, charitable organizations and private dam owners to
65 finance or refinance costs of coastal and inland waterway infrastructure inspection, repair and
66 removal projects including, but not limited to, projects related to dams, seawalls, jetties,
67 revetments, retaining walls, levies and other means of flood control; provided, however, that 50
68 per cent of the total funds expended shall be on projects related to dams and 50 per cent of the
69 total funds expended shall be on infrastructure projects related to other means of flood or wave
70 control including, but not limited to, seawalls, jetties, revetments, retaining walls, and levies.

71 Grants from the fund shall only be available to local government bodies and charitable
72 organizations. For the purposes of this section, a local governmental body shall include a town,
73 city, district, commission, board and any regional local governmental unit.

74 (c) On or before September 1 of each year, a local governmental body, charitable organization or
75 private dam owner may apply to the secretary of energy and environmental affairs for assistance
76 in financing the cost of a coastal or inland waterway infrastructure project. The secretary shall
77 promulgate rules and regulations for the administration and implementation of this section,
78 including, but not limited to, a priority system for the approval of projects; provided, however,
79 that priority shall be given to projects that are owned or operated by cities, towns and charitable
80 organizations which are tax-exempt; and (i) have been classified by the department of
81 conservation and recreation as a high hazard or significant hazard dam; (ii) have been designated
82 by the office of coastal zone management as a critical or poor seawall; or (iii) have been
83 identified by the United States army corps of engineers as requiring imminent infrastructure
84 improvement.

85 SECTION 4. The first paragraph of section 8 of chapter 44 of the General Laws, as appearing in
86 the 2010 Official Edition, is hereby amended by adding the following clause:-

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

94 SECTION 5. Section 44 of chapter 253 of the General Laws, as so appearing, is hereby amended
95 by inserting after the first paragraph the following definition:-

96 'Abandoned dam', a dam that has no identifiable owner or a dam in which the owner fails to
97 respond to the owner's obligations under sections 44 to 48, inclusive, and as a result of which the
98 commissioner has taken emergency action under section 47 and created a lien upon the lots of
99 land on which the dam is situated and upon the buildings and structures on the lots under section
100 48.

101 SECTION 6. Said section 44 of said chapter 253, as so appearing, is hereby further amended by
102 striking out the definition of 'Commissioner' and inserting in place thereof the following
103 definition:-

104 'Commissioner', the commissioner of conservation and recreation or a designee of the
105 commissioner.

106 SECTION 7. Said section 44 of said chapter 253, as so appearing, is hereby further amended by
107 inserting after the word 'any', in line 9, the following word:- man-made.

108 SECTION 8. Said section 44 of said chapter 253, as so appearing, is hereby further amended by
109 inserting after the word 'safety', in line 17, the following words:- or which could cause
110 significant harm to the aquatic ecosystem.

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

114 SECTION 10. Said section 44 of said chapter 253, as so appearing, is hereby further amended
115 by inserting after the definition of 'Owner' the following definition:-

116 'Remove' or 'Removal', the controlled dismantlement or breaching of a dam, in compliance with
117 applicable law, to the extent that water is not impounded or diverted by the dam and fish passage
118 is no longer impeded; provided, however, that, following a controlled dismantlement or
119 breaching of a dam, a minimal degree of impoundment necessary for agricultural uses or wetland
120 retention and open water conditions may be allowed, so long as any impediment to fish passage
121 has been removed and any threats to public safety or property have been alleviated.

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

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

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

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

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

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

138 SECTION 17. Said section 47 of said chapter 253, as so appearing, is hereby further amended by
139 striking out, in line 22, the figure ‘\$500’ and inserting in place thereof the following figure:-
140 \$5,000.

141 SECTION 18. Notwithstanding any general or special law to the contrary, on or before January
142 31, 2013, the comptroller shall transfer to the the Dam, Sea Wall and Retaining Wall Repair or
143 Removal Fund, established pursuant to section 2VIII of chapter 29 of the General Laws, the
144 balance of any amounts transferred to the Water Pollution Abatement Trust by the state treasurer
145 in accordance with paragraphs (a) and (c) of section 16 of chapter 275 of the acts of 1989 and
146 applied by the trust to make loans to local governmental units in accordance with section 26 of
147 chapter 203 of the acts of 1992, including repayments on such loans and any investment earnings
148 thereon.”; and by inserting before the enacting clause the following emergency preamble:

149 “Whereas, The deferred operation of this act would tend to defeat its purpose, which is to
150 provide forthwith for the repair and safety of dams, therefore it is hereby declared to be an
151 emergency law, necessary for the immediate preservation of the public safety.”.