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**Chapter 448 of the Acts of 2012**

**Dams and Seawalls**

**M.G.L. c. 29, §2III**

The following presentation is offered for discussion purposes only and does not necessarily represent current statute, regulation, or policy positions of the Commonwealth of Massachusetts unless specifically acknowledged.

This presentation is not to be cited as a reference. It's purpose is to foster open and broad discussion of the issues as well as help assure public awareness of the discussions as of the date of the presentation.

**M.G.L. c. 29, §2III  
Dams and Seawalls**

**Signed into law by Governor Patrick on 10 January 2013**

**Primary text based on Senate Bill 1985 and House 4557**

**In addition to agency input, major support from a coalition of the environmentalists and engineering/construction interests coordinated by Steve Long (TNC) and Abbie Goodman (Engineering Center).**

**House member James Cantwell (D – Fourth Plymouth) successfully added seawalls to the legislation.**

## M.G.L. c. 29, §2III Dams and Seawalls

Item	Task	Primary	Support
Chapter 29 New Section 2III	b) Use of funds:		
	Provide grants and loans	EEA	
	Applicant eligibility: local government; charitable organizations; private dam owners		
	Project eligibility: finance or refinance		
	Waterway infrastructure inspection		
	Repair and removal		
	Dams, seawalls, jetties, revetments, retaining walls, levies, other means of flood control		
	50% to dams, 50% to flood or wave control		

## M.G.L. c. 29, §2III Dams and Seawalls

Item	Task	Primary	Support
Chapter 29: New Section 2III (cont)	c) Application for funds:		
	Application on or before Sept 1 each year	Owners apply to EEA	
	Promulgate rules and regs	EEA	
	Establishes priorities for funding approval:		
	Owned by cities, towns, charitable organizations		
	Classified as high hazard or significant hazard dam		
	Designated by CZM as critical or poor seawall		
	Identified by USACE as requiring imminent infrastructure improvement		

<b>GOAL DATE:</b>	<b>2 August 2013</b> <b>Release of offering documents with applications due 1 September.</b>
<b>START DATE:</b>	<b>29 January 2013  </b> <b>First Interagency Workgroup Meeting</b>
<b>DRAFT DUE:</b>	<b>1 March 2013</b> <b>Back from workgroup, to EEA Legal</b>
<b>SUBMIT TO GOV/ANF</b>	<b>With request of return by 10 April 2013</b>
<b>DRAFT TO SEC. STATE:</b>	<b>12 April 2013</b>
<b>DRAFT TO MMA/EOHED:</b>	<b>15 April 2013</b> <b>(35 days prior to public hearing[s])</b>
<b>PUBLISH REGS</b>	<b>26 April 2013</b> <b>(21 days prior to public hearings)</b>
<b>PUBLIC HEARINGS:</b>	<b>Not before 21 May, Recommended: 21 – 23 May</b>
<b>PUBLIC COMMENT ENDS:</b>	<b>7 June 2013</b>
<b>REGS FINALIZED FOR EEA:</b>	<b>21 June 2013</b> <b>(final review by EEA Legal)</b>
<b>FINAL REGS TO GOV/ANF:</b>	<b>5 July 2013</b>
<b>FINAL REGS TO SEC. STATE:</b>	<b>19 July 2013</b> <b>(also EEA legal et al)</b>
<b>FINAL REGS PUBLISHED:</b>	<b>2 August 2013</b>

# Chapter 448 of the Acts of 2012

<b>GOAL DATE:</b>	<b>22 July 2013</b>	<b>Release of offering documents with applications due 1 September.</b>
<b>START DATE:</b>	<b>29 January 2013  </b>	<b>First Interagency Workgroup Meeting</b>
<b>DRAFT DUE:</b>	<b>1 March 2013</b>	<b>Back from workgroup, to EEA Legal</b>
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<b>REGS FINALIZED FOR EEA:</b>	<b>7 June 2013</b>	<b>(final review by EEA Legal)</b>
<b>FINAL REGS TO GOV/ANF:</b>	<b>14 June 2013</b>	
<b>FINAL REGS TO SEC. STATE:</b>	<b>5 July 2013</b>	<b>(also EEA web)</b>
<b>FINAL REGS PUBLISHED:</b>	<b>22 July 2013</b>	
<b>RFR PUBLISHED:</b>	<b>22 July 2013</b>	
<b>APPLICATIONS DUE:</b>	<b>29 August 2013</b>	

## The Need: Dams

2006: Senate Committee on Post Audit and Oversight publishes Decades of Neglect, offering recommendations to improve dam safety and maintenance in Massachusetts following the near failure of the Whittendon Pond Dam the year before. Among the recommendations are:

- ❖ Tighter enforcement of regulations regarding Emergency Action Plans
- ❖ Increase enforcement provisions and fines regarding high hazard and significant hazard dams
- ❖ Create a \$20 million Dam Safety Revolving Loan Fund to provide low interest loans “to assist private and municipal owners with assessment, repair and removal of dams”
- ❖ Provide \$10.3 million to DCR for capital improvements to DCR owned dams

## The Need: Dams

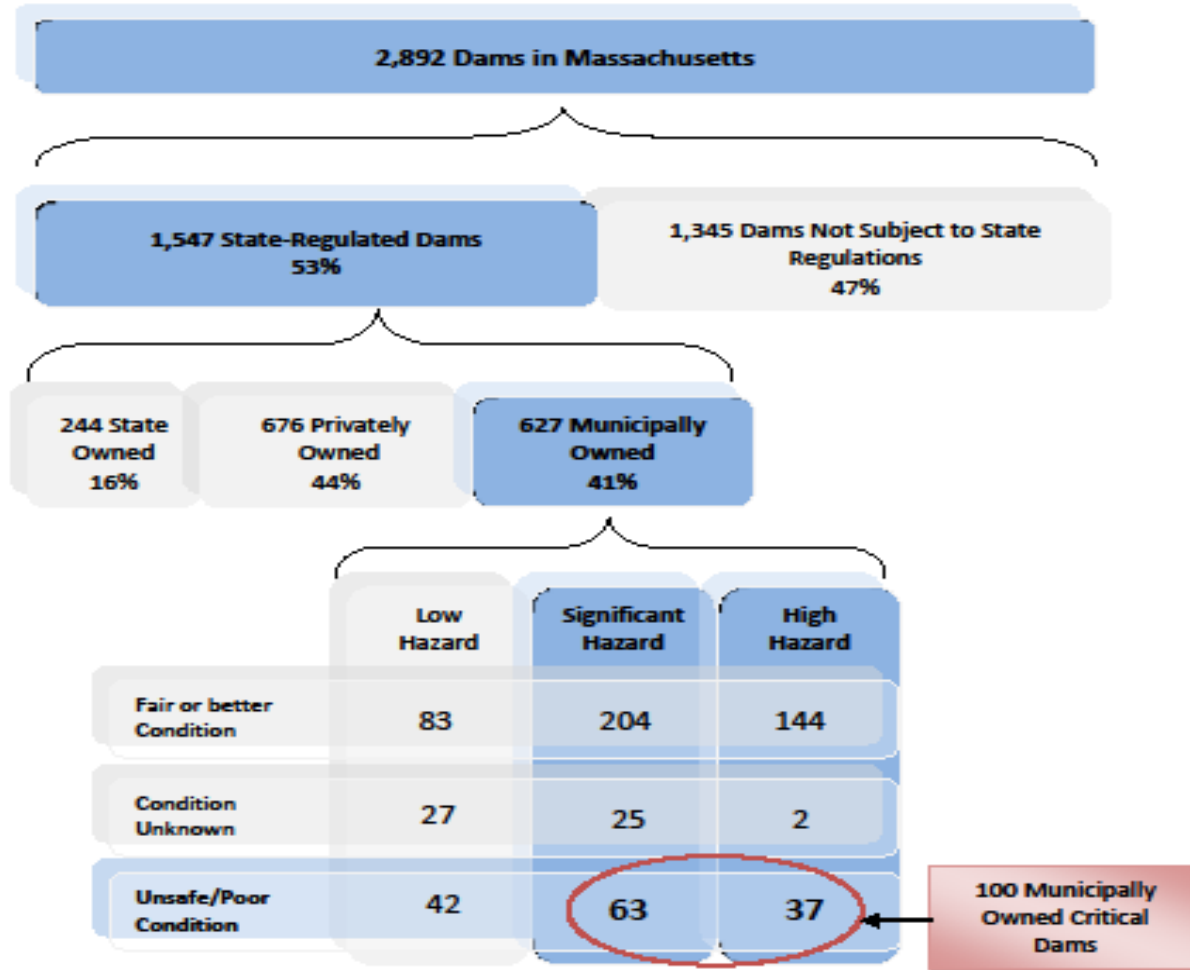
2011: The State Auditor's Division of Local Mandates releases a review of the municipal impact of law and regulation governing dam safety in Massachusetts. Of the nine recommendations, three stand out:

- ❖ Local chief executive officers should dedicate resources to maintenance of the dams owned by their communities.
- ❖ Ensure that every high hazard municipally owned critical dam has an emergency action plan
- ❖ Establish a multi-year program of incentive financing to target resources for the remediation of 100 municipal critical dams.



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Figure 1: Identification of 100 Municipally Owned Critical Dams



## The Need: Dams

### 2011: Auditor's Report

#### ❖ Cost of Recommendations:

“Local annual maintenance procedures can be procured at relatively low cost.”

#### Emergency Action Plans:

High Hazard Dams	\$ 150,000.
Significant Hazard Dams	\$ 650,000.

Remediation of Substandard Dams	<u>\$60,000,000.</u>
	\$60,750,000.

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## The Need: Seawalls

2007: Coastal Hazards Commission issues Preparing for the Storm which includes an infrastructure inventory of South Shore.

2009: DCR – Office of Waterways expands the review and releases the Massachusetts Coastal Infrastructure and Assessment Project

The report considers state (agency) and municipally owned structures.

*It does NOT include federally-owned, state authority-owned and privately-owned. The owners of these structures are responsible for the condition and assessment of their structures. Plus information for 28 beach sites was not available at the time of publication.*

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## The Need: Seawalls

2009: DCR – Office of Waterways report: Cost of  
Recommendations:

\$626,798,185. (in 2006 dollars)

“Based on the proposed spending plan, approximately \$31.5 million will be needed each year to meet the 20-year repair plan.”

The 2009 Waterways report only discussed restoring structures to their original design. It is likely such designs would not be permitted today, nor do they take into account the projected impact of climate change.

\$ 1 billion

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**The Fund:**

**According to the Water Pollution Abatement Trust:**

**At this point we have \$18.7 million in the Commonwealth Fund. We are currently in the process of receiving borrower payments for loans that are associated with the Commonwealth Fund and an additional \$1.4 million will be received in February.**

*-email, Nate Keenan (TRE) 16 January 2013*

**\$20.1 million**

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The Fund: \$20.1 million versus \$60 million + \$626.8 million

Award Scenarios: Legislation permits grants and loans

	<u>Dams</u>	<u>Seawalls</u>
5 year drawdown	\$2,010,000.	\$2,010,000.
10 year drawdown	\$1,005,000.	\$1,005,000.
20 year	\$ 502,500.	\$ 502,500.

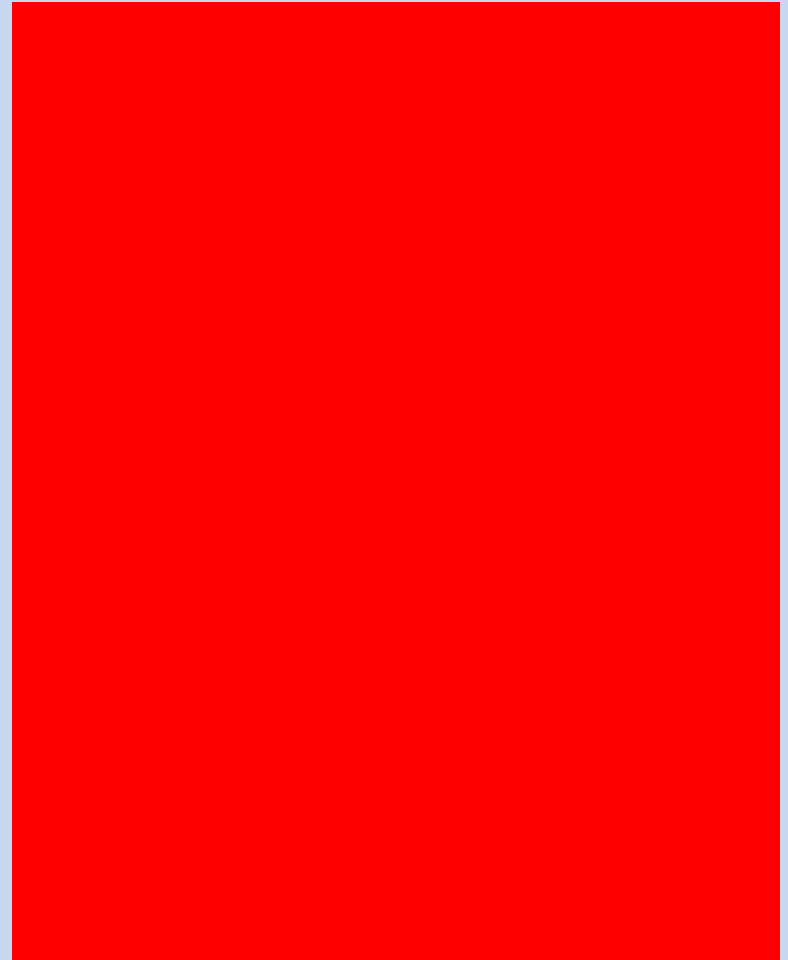
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Allocation of funds:  $$$_D = $$_S$

Dams



Seawalls, levees:



## **Dam Funds:**

- ❖ **Category 1** - Dams and similar non-jurisdictional structures

Dam means any artificial barrier, including appurtenant works, which impounds or diverts water, and includes, but is not limited to, dams subject to the regulatory jurisdiction of DCR under 302 CMR 10.00 and other dams and similar impoundments or structures.

## **Seawall/Levee Funds:**

- ❖ **Category 2** - Seawalls, coastal flood and/or wave control structures
- ❖ **Category 3** - Inland flood control structures and levies, excluding dams and non-jurisdictional impoundments



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Applications for Dam Projects to be accepted from:

Local Government Bodies, Charitable Organizations,  
Private Owners

No state agencies, no MWRA.

No Federal Structures

Charitable Organization means an organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and that is registered with the Massachusetts Office of the Attorney General as a public charity.

- Attorney General's Office of Public Charity

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**Applications for Seawall and Levee Projects to be accepted from:**

**Local Government Bodies, Charitable Organizations**

**No state agencies, no MWRA.**

**No Federal structures**

**No private owners**

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**15.06: Priority System for the Approval of Projects**

**(1) Funding Priorities Specified in the Act: Subject to the fifty percent (50%) split of funds provided in 301 CMR 15.03, first priority for funding shall be given to projects that are owned or operated by cities, towns and Charitable Organizations and that meet one or more of the following applicable criteria:**

- (a) The structure has been classified by DCR as a High Hazard or Significant Hazard Dam in poor or unsafe condition;**
- (b) The Coastal Flood or Wave Control structure has been rated in fair, poor or critical condition (C-F) according to the five level condition rating system in the Massachusetts Inventory and Assessment Project, as published by Department of Conservation and Recreation;**
- (c) The structure has been identified in writing by the United States Army Corps of Engineers as requiring imminent infrastructure improvement.**

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**15.06: Priority System for the Approval of Projects**

**(2) Other Funding Priorities for Dams: Further evaluation of projects shall be based on consideration, as applicable, of whether or the extent to which such projects:**

- (a) Result in improvement to public health and/or safety;**
- (b) Result in protection of public property;**
- (c) Have design plans that recognize the potential impact of climate change and improve resilience;**
- (d) Are part of a water supply system;**
- (e) Have obtained all applicable permits required to implement the project;**
- (f) Will improve or expand the functions of natural systems;**
- (g) Will reduce or eliminate a threat to native animal, and naturally occurring plant and resident or migratory fish species habitat or movement;**
- (h) Have secured local borrowing authorization.**

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15.06: Priority System for the Approval of Projects

(3) Other Funding Priorities for Coastal Flood or Wave Control Projects including but not limited to Seawalls, Jetties, Revetments, Groins, Retaining Walls and Levees: Further evaluation shall be based on consideration, as applicable, of whether or the extent to which such projects:

- (a) Have a moderate to high protection level (III-V) in accordance with *The Massachusetts Coastal Infrastructure Inventory and Assessment Project*; or
- (b) Have annual maintenance and monitoring reports that indicate a worsening condition or a licensed structural engineer has declared such;
- (c) Result in improvement to public health and/or safety;
- (d) Have design plans that recognize the potential impact of climate change and that improve resilience;
- (e) Will improve or expand the functions of natural systems;
- (f) Have obtained all applicable permits required to implement the project; and,
- (g) Have secured the local borrowing authorization.

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**15.06: Priority System for the Approval of Projects**

**(4) Other Funding Priorities for Inland Flood Control Structures: Further evaluation of inland Levees and similar Flood Control Structures, excluding Dams, shall be based on consideration, as applicable, of whether or the extent to which such projects:**

- (a) Result in improvement in public health and/or safety;**
- (b) Have design plans that recognize the potential impact of climate change and that improve resilience;**
- (c) Will improve or expand the functions of natural systems;**
- (d) Have obtained all permits required to implement the project; and,**
- (d) Have secured the local borrowing authorization.**

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**Low interest loans – with the ability to provide incentives to certain priorities over time:**

**The interest rate for Loans made shall be fixed at no more than two percent or one half the prime rate as published by the Federal Reserve Bank at the time the Loan application is made, whichever is greater;**

**The Loan maturity period shall be for not more than 20 years from the date that disbursements to the Borrower begin. EEA and the borrower may establish a shorter repayment schedule by mutual agreement;**

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**Public Hearing Schedule**

**Tuesday, May 21, 2013, 10:00 AM – 12:00 Noon**  
**100 Cambridge Street**  
**2<sup>nd</sup> Floor Conference Room D**  
**Boston, MA 02114**

**Tuesday, May 21, 2013, 2:00 PM – 4:00 PM**  
**Scituate Town Hall – Selectmen Hearing Room**  
**600 Chief Justice Cushing Way**  
**Scituate, MA 02066**

**Wednesday, May 22, 2013, 9:30 AM – 11:30 AM**  
**Lake Quinisigamond State Park**  
**10 North Lake Avenue**  
**Worcester, MA 01612**

**Wednesday, May 22, 2013, 2:00 PM – 4:00 PM**  
**Pioneer Valley Planning Commission**  
**60 Congress Street**  
**Springfield, MA 01104**

**Written testimony will be accepted from the opening of the comment period on Friday, April 26, 2013 until 5:00 P.M. Friday, May 29, 2013. Written testimony should be submitted via email to [john.clarkeson@state.ma.us](mailto:john.clarkeson@state.ma.us)**



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**THANK YOU!**

**QUESTIONS?**

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[www.mass.gov/green](http://www.mass.gov/green)