

HOUSE No. 00265

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to dam repair, removal and replacement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Christopher N. Speranzo</i>	<i>3rd Berkshire</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>John Mahoney</i>	<i>13th Worcester</i>

HOUSE No. 00265

By Mr. Straus of Mattapoisett, petition (accompanied by Bill, House, No. 00265) of William M. Straus and others relative to dam repair, removal and replacement environmental concerns. Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 2545 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to dam repair, removal and replacement.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Definitions.

2 (a) Section 44 of chapter 253 of the General Laws is hereby amended by adding after
3 line 2 the following new definition: “Abandoned”, a dam that has no identifiable owner or a dam
4 whose owner fails to respond to the owner’s obligations under sections 44 to 48, inclusive, based
5 on any emergency action taken by the commissioner pursuant to section 47, and the creation of a
6 lien upon the lot or lots of land on which the dam is situated and upon the buildings and
7 structures on said lot or lots pursuant to section 48.

8 (b) Section 44 of chapter 253 is further amended by inserting in line 9 after the word
9 “any” the following words: “manmade”

10 (c) Section 44 of chapter 253 of the General Laws is further amended by inserting in
11 line 17 after the words “property or safety” the following words: “or which could cause
12 significant harm to the aquatic ecosystem”.

13 (d) Section 44 of chapter 253 is further amended in line 32 by striking the words
14 “environmental management” and inserting in place thereof the following words: “conservation
15 and recreation”

16 (e) Section 44 of chapter 253 is further amended by adding after the definition of
17 “Owner” the following definition: “Remove,” or “Removal,” the controlled dismantlement or
18 breaching of a dam to the extent that water is not impounded or diverted by the dam and fish
19 passage is no longer impeded and which is dismantled in compliance with applicable laws and
20 regulations of the Commonwealth; provided , that a minimal degree of impoundment needed for
21 agricultural uses to retain wetlands and open water conditions may be allowed following
22 controlled dismantlement or breaching of a dam, while removing any pediment to fish passage or
23 alleviating threats to safety or property.

24 SECTION 2. Dam Removal.

25 (a) Section 46 of said chapter 253 of the General Laws is hereby amended in line 14 by
26 inserting after the words “to be unsafe” the following words: “or abandoned”

27 (b) Section 46 of said chapter 253 is further amended in line 22 by inserting after the
28 words “the dam into a safe condition” the following words: “or safely remove the dam”.

29 (c) Section 46A of said chapter 253 is hereby amended in line 1 by inserting 35 after the word
30 “removed” the following word: “repaired,”

31 (d) Section 46A of said chapter 253 is further amended by inserting in line 5 after the
32 words “the owner approving” the following words: “or safely removing”

33 (e) Section 46A of said chapter 253 is further amended by deleting in line 7 the words “life and
34 property,” and inserting in place thereof the following words: “safety, property or the
35 environment.”

36 (f) Section 47 of said chapter 253 is hereby amended by inserting in line 6 after the
37 words “operational condition,” the following words: “or remove the dam”

38 SECTION 3. Enforcement.

39 Section 47 of said chapter 253 is hereby amended by striking in line 22 the words “not to exceed
40 \$500” and inserting in place thereof the following words: “up to twenty five thousand dollars.”

41 SECTION 4. Administration.

42 (a) The commissioner of the department of conservation and recreation (hereinafter
43 referred to as the commissioner), in conjunction with the commissioner of fish and game, the
44 division of fish and wildlife and the riverways program shall on or before July 1, 2011, complete
45 a detailed inventory of all dams on public and private property in the Commonwealth. The
46 commissioner shall update such dam inventory on an annual basis. The commissioner shall
47 submit the inventory in a report to the joint committee on environment, natural resources and
48 agriculture and to the senate and house committees on ways and means. This report shall include
49 the following detailed information:

50 (1) A comprehensive list of the person, agency, municipality, or entity that owns and operates
51 every dam and the location of every dam where such ownership or operation has been registered
52 with the Office of Dam Safety.

53 (2) A list of specific owners who have failed to meet regulatory requirements, including but not
54 limited to, registration and inspection requirements.

55 (3) A classification of the status of all hazardous dams that pose a threat to public health, safety,
56 welfare, and property or the environment and when or whether they have been repaired,
57 including, where applicable, the presence of polluted and/or hazardous underwater sediment
58 present in the retained area of a dam.

59 (4) A comprehensive list of dams that are abandoned as defined in section 44 of chapter 253 of
60 the General Laws.

61 (5) A comprehensive list of all dams whose existence, condition or operation pose a threat to
62 freshwater animal and plant and resident or migratory fish species habitat or movement.

63 (a) The commissioner must ensure Emergency Action Plans are developed for all High Hazard
64 Dams and Significant Hazard Dams, as defined in regulation. An Emergency Action Plan
65 template shall be developed and available for all dam owners. The commissioner shall ensure
66 that necessary local and state dam safety officials have immediate access to such Plans in the
67 event of a potential dam failure.

68 (b) The commissioner shall develop an inspection schedule, as required by dam safety
69 regulations, to ensure that all High Hazard, Significant Hazard, as Low Hazard Dams, as defined
70 in regulation, are inspected no less than every five years.

71 (c) The Commissioner shall review the hazard classifications of all dams at least every five
72 years, to ensure the accuracy of the dam classification.

73 (d) The Secretary of the Executive Office of Environmental Affairs shall ensure capital funds are
74 available for dam assessment, repair and removal of all dams statewide.

75 (e) The Secretary of Environmental Affairs shall write and implement a \$20,000,000 revolving
76 loan fund for private dam owners to inspect, repair, and remove dams, with the assistance of the
77 Secretary of Administration and Finance. Such Fund shall be paid for through the Capital budget.

78 SECTION 5. Construction.

79 Nothing in this chapter shall be interpreted in any way to alter or amend any permitting
80 requirements, reporting requirements, allocation procedures, or other requirements set forth in
81 any other provision of the general laws.

82 SECTION 6. Chapter 40 of the General Laws, as appearing in the 2008 Official Edition, is
83 hereby amended by adding the following section:

84 Section 61.

85 (a) Any city or town which accepts the provisions of this section may elect to acquire by gift,
86 purchase, eminent domain or otherwise, any dam, as defined by section 44 of chapter 253 of the
87 General Laws, located within the town, including any real property appurtenant thereto, if such
88 dam and any appurtenant real property is not at the time of such acquisition owned or held in
89 trust by the commonwealth. In connection with such an acquisition the town may, subject to
90 appropriation, repair, reconstruct and make improvements to a town-owned dam as may be
91 necessary, in the judgment of the board of selectmen, or the town council, each manager in a city

92 having a Plan D or Plan E form of charter or the mayor, with the approval of the city council or
93 board of aldermen in any other city, to maintain, repair or improve such dam, and to accept and
94 expend grants or gifts for such purposes in accordance with section 53A of chapter 44 upon
95 approval of the board of selectmen without further appropriation.

96 (b) Upon a two-thirds vote of the voters present and voting at a meeting duly called, the
97 municipality or public authority may borrow funds for the purposes authorized in this section.
98 Any such borrowing shall be repaid within 40 years of its date of issue, and shall be outside the
99 limit of indebtedness prescribed in section 10 of chapter 44. Except as provided in this act, any
100 borrowing pursuant hereto shall be subject to the requirements of said chapter 44.

101 (c) Any dam owned by the municipality or public authority shall constitute public
102 improvements for purposes of chapter 80 and, subject to the approval of the town, the selectmen,
103 or the town council, each manager in a city having a Plan D or Plan E form of charter or the
104 mayor, with the approval of the city council or board of aldermen in any other city, may assess
105 betterments to pay any and all costs, of or relating to, acquiring, owning, maintaining or
106 improving any such dam. Such betterments may be assessed upon properties benefiting from the
107 acquisition, ownership, repair, maintenance or improvement of such a dam and in such amounts
108 as the authorized board or official shall determine. Except as otherwise provided by this act,
109 any betterment so assessed shall be subject to said chapter 80. Any betterment assessed
110 pursuant to this act may be apportioned for a maximum term of 40 years.

111 (d) Notwithstanding any general or special law to the contrary, the municipality or public
112 authority shall have no liability for or related to the presence, release or threat of release of oil or

- 113 any hazardous material with respect to any dam or dams acquired by the town in accordance with
- 114 section that occurred prior to the date any such dam or dams were acquired by the town.