

SENATE No. 01985

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

AN ACT FURTHER REGULATING DAM SAFETY, REPAIR AND REMOVAL.

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

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

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

(1) a comprehensive list of each person, agency, municipality or entity that owns and operates a dam and the location of each dam where such ownership or operation is registered with the department;

(2) a list of specific owners who have failed to meet regulatory requirements including, but not limited to, registration and inspection requirements;

(3) a classification of the status of any hazardous dams that pose a threat to public health, safety, welfare, property or the environment and when or whether any such dam has been repaired including, where applicable, the presence of polluted or hazardous underwater sediment present in the retained area of a dam;

(4) a comprehensive list of dams that are abandoned as defined in section 44 of chapter 253; and

(5) a comprehensive list of dams, the existence, condition or operation of which poses a threat to freshwater animal and plant and resident or migratory fish species habitat or movement.

Section 65. (a) The department shall ensure emergency action plans shall be developed for all high hazard dams and significant hazard dams, as defined by department regulations. The department shall establish and make available to dam owners an emergency action plan template. The department shall ensure that necessary local and state dam safety officials have immediate access to such plans in the event of a potential dam failure.

(b) The department shall develop an inspection schedule to ensure that all high hazard dams , as defined in department regulations, are inspected at least every 2 years, all significant hazard dams, as defined in department regulations, are inspected at least every 5 years, and all low hazard dams are inspected at least every 10 years.

(c) The department shall review the hazard classifications of dams at least every 5 years to ensure the accuracy of the dam classification.

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

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

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

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

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

Section 2CCCC. There shall be established and set upon the books of the commonwealth a separate fund to be known as the Dam Repair and Removal Revolving Loan Fund, the proceeds of which shall be used to provide low-interest long-term loans to private dam owners and cities and towns to inspect, repair and remove dams. The fund shall consist of the following monies: (i) any appropriations, bond proceeds or other monies authorized by the general court and specifically designated for deposit into the fund; (ii) loan repayments and other payments received by the fund in respect to loans to private dam owners and cities and towns; (iii) investment earnings on monies in the fund; and (iv) any other amounts required to be credited to the fund by any law, resolution or agreement entered into by the department of conservation and recreation.

SECTION 4. Chapter 40 of the General Laws is hereby amended by adding the following section:-

Section 61. (a) A city or town that acquires by gift, purchase, eminent domain under chapter 79, or otherwise, a dam, as defined in section 44 of chapter 253, located within the city or town, including any real property appurtenant thereto, for the purposes of removing, repairing, reconstructing or making improvements to the dam may assess betterments to pay the costs of or relating to acquiring, owning, removing, maintaining or improving any such dam. Such betterments may be assessed upon properties benefiting from the acquisition, ownership, removal, repair, maintenance or improvement of a dam and in such amounts as the authorized board or official shall determine. A betterment so assessed shall be subject to chapter 80. Any betterment assessed pursuant to this section may be apportioned for a maximum term of 40 years.

SECTION 5. The first paragraph of section 8 of chapter 44 of the General Laws, as most recently amended by section 33 of chapter 188 of the acts of 2010, is hereby further amended by adding the following clause:-

(25) For the acquisition of a dam or the removal, repair, reconstruction and improvements to a dam owned by a municipality, as may be necessary to maintain, repair

or improve such dam, 40 years; provided, however, that this clause shall include dams, as defined in section 44 of chapter 253, acquired by gift, purchase, eminent domain under chapter 79, or otherwise, and located within a municipality, including any real property appurtenant thereto, if such dam and any appurtenant real property is not at the time of such acquisition owned or held in trust by the commonwealth.

SECTION 6. Section 44 of chapter 253 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the introductory paragraph the following definition:-

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

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

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

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

SECTION 9. Said section 44 of said chapter 253, as so appearing, is hereby further amended by inserting after the word “safety”, in line 17, the following words:- or which could cause significant harm to the aquatic ecosystem.

SECTION 10. Said section 44 of said chapter 253, as so appearing, is hereby further amended by striking out, in line 32, the words “environmental management” and inserting in place thereof the following words:- conservation and recreation.

SECTION 11. Said section 44 of said chapter 253, as so appearing, is hereby further amended by inserting after the definition of “Owner” the following definition:-

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

following controlled dismantlement or breaching of a dam, so long as any impediment to fish passage has been removed or any threats to safety or property have been alleviated.

SECTION 12. Section 46 of said chapter 253, as so appearing, is hereby amended by inserting after the word “unsafe”, in line 14, the following words:- or abandoned.

SECTION 13. Said section 46 of said chapter 253, as so appearing, is hereby further amended by inserting after the word “condition”, in line 22, the following words:- or to safely remove the dam.

SECTION 14. Section 46A of said chapter 253, as so appearing, is hereby amended by inserting after the word “removed”, in line 1, the following word:- , repaired.

SECTION 15. Said section 46A of said chapter 253 is hereby further amended by inserting after the word “approving”, in line 5, the following words:- the dam or the safe removal of.

SECTION 16. Said section 46A of said chapter 253, as so appearing, is hereby further amended by inserting after the word “property,” in line 7, the following words:- or such terms and conditions, if any, as the commissioner, in consultation with the commissioner of fish and game, deems necessary for the protection of the environment.

SECTION 17. Section 47 of said chapter 253, as so appearing, is hereby amended by inserting after the word “condition,” in line 6, the following words:- or remove the dam.

SECTION 18. Said section 47 of said chapter 253 is hereby further amended by striking out, in line 22, the figure “\$500” and inserting in place thereof the following figure:- \$5,000.