

SENATE No. 411

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relative to Flood Control and Regulation of Discharge into Rivers.

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. Chapter 91 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by inserting after section 12A the following section:-

3 12B. (a) No person authorized or licensed to build a structure, drive piles, fill land,
4 operate a water pollution abatement facility or storm water run-off system, or make a dam or
5 other obstruction or encroachment in, over or upon the waters of any river or stream shall, by
6 release of water from a dam, or effluent from a water pollution abatement facility, storm water
7 run-off system or any other facility or system cause the level of water of said river or stream to
8 be raised above its natural levels without first notifying the department of the intention to do so
9 and receiving the department’s approval to raise the waters of said river or stream. The
10 department shall promulgate rules and regulations regarding sufficient notice and public hearings
11 to potentially-affected downstream cities, towns and property owners abutting the river or
12 stream. The department shall include in said regulations provisions for notification in the event
13 of a flood or other emergency. Violations of this section shall be punished by a fine of not less
14 than \$1,000 nor more than \$50,000 for each day that the water level exceeds the natural level.

15 The department may, with the participation of affected downstream communities, negotiate a
16 settlement agreement instead of the imposition of the total fine permitted under this section.

17 (b) No person authorized or licensed to build any structure, drive piles, fill land or to
18 make any dam or other obstruction or encroachment in, or to operate and make effluent from a
19 water pollution abatement facility or storm water run-off system over or upon the waters of any
20 river or stream, shall cause the level of water in said river or stream to be raised above its natural
21 levels without first notifying the chief executive officer of every city and town downstream of
22 the point of discharge within Massachusetts or directly adjacent to the Massachusetts border of
23 the intent to do so. For the purposes of this section, the department shall maintain a current
24 emergency contact list to be notified in the event of a release of water or discharge of effluent.
25 Violations of this section shall be punished by a fine of not less than \$1,000 nor more than
26 \$50,000 for each day that the water level exceeds the natural level. The department may, with
27 the participation of affected downstream communities, negotiate a settlement agreement instead
28 of the imposition of the total fine permitted under this section.

29 (c) Notification provided in accordance with the provisions of this section shall not
30 constitute any exemption from liability for damages that may result from the actions of any such
31 person, whether or not approved by the department, in the event that an aggrieved party chooses
32 to file a civil action against such person.