

**SENATE . . . . . No. 427**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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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. Purpose and Findings.

2 WHEREAS, there are more than three thousand dams in the Commonwealth, most of  
3 which are privately owned or have been abandoned, and many of which no longer serve their  
4 original purpose or any other purpose; and

5 WHEREAS, many dams do not comply with the Commonwealth’s health and safety  
6 standards and therefore pose an immediate threat to public health, safety, welfare, and the  
7 environment; and

8 WHEREAS, the appropriate repair, replacement or removal of unsafe or abandoned dams  
9 would eliminate threats posed by those dams and would protect public safety and the  
10 environment.

11 SECTION 2. Definitions.

12 (a) Section 44 of chapter 253 of the General Laws is hereby amended by adding after  
13 line 2 the following new definition:- “Abandoned”, a dam that has no identifiable owner or a

14 dam whose owner fails to respond to the owner’s obligations under sections 44 to 48, inclusive,  
15 based on any emergency action taken by the commissioner pursuant to section 47, and the  
16 creation of a lien upon the lot or lots of land on which the dam is situated and upon the buildings  
17 and structures on said lot or lots pursuant to section 48. .

18 (b) Section 44 of chapter 253 is further amended by inserting in line 9 after the word  
19 “any” the following words:- “man-made”

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

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

26 (e) Section 44 of chapter 253 is further amended by adding after the definition of  
27 “Owner” the following definition:- “Remove,” or “Removal,” the controlled dismantlement or  
28 breaching of a dam to the extent that water is not impounded or diverted by the dam and fish  
29 passage is no longer impeded and which is dismantled in compliance with applicable laws and  
30 regulations of the Commonwealth; provided, that a minimal degree of impoundment needed to  
31 retain wetlands and open water conditions may be allowed following controlled dismantlement  
32 or breaching of a dam, while removing any impediment to fish passage or alleviating threats to  
33 safety or property.

34 SECTION 3. Dam Removal.

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

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

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

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

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

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

#### 48 SECTION 4. Enforcement.

49 Section 47 of said chapter 253 is hereby amended by striking in line 22 the word “\$500”  
50 and inserting in place thereof the following words:- “up-to twenty-five thousand dollars.”

#### 51 SECTION 5. Administration.

52 (a) The commissioner of the department of conservation and recreation (hereinafter  
53 referred to as the commissioner), in conjunction with the commissioner of fish and game, the  
54 division of fish and wildlife and the riverways program shall on or before December 1, 2007,

55 complete a detailed inventory of all dams on public and private property in the Commonwealth.  
56 The commissioner shall update such dam inventory on an annual basis. The commissioner shall  
57 submit the inventory in a report to the joint committee on environment, natural resources and  
58 agriculture and to the senate and house committees on ways and means.

59 This report shall include the following detailed information:

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

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

65 (3) A classification of the status of all hazardous dams that pose a threat to public  
66 health, safety, welfare, and property or the environment and when or whether they have been  
67 repaired.

68 (4) A comprehensive list of dams that no longer serve their original purpose or any  
69 useful purpose and may be removed.

70 (5) A comprehensive list of dams that are abandoned as defined in section 44 of  
71 chapter 253 of the General Laws.

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

74 (b) The commissioner must ensure Emergency Action Plans are developed for all  
75 High Hazard Dams and Significant Hazard Dams, as defined in regulation. An Emergency

76 Action Plan template shall be developed and available for all dam owners. The commissioner  
77 shall ensure that necessary local and state dam safety officials have immediate access to such  
78 Plans in the event of a potential dam failure.

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

82 (d) The Commissioner shall review the hazard classifications of all dams at least  
83 every five years, or if and when new development is constructed near existing dams, to ensure  
84 the accuracy of the dam classification.

85 (e) The Secretary of the Executive Office of Environmental Affairs shall publish a  
86 written guidance to streamline the regulatory permitting process for dam removal by December  
87 31, 2007.

88 (f) The Secretary of the Executive Office of Environmental Affairs shall ensure  
89 capital funds are available for dam assessment, repair and removal of all dams statewide. (g)  
90 The Secretary of Environmental Affairs shall write and implement a \$20,000,000 revolving loan  
91 fund for private dam owners to inspect, repair, and remove dams, with the assistance of the  
92 Secretary of Administration and Finance. Such Fund shall be paid for through the Capital  
93 budget.

94 (h) The commissioner shall identify opportunities in new and existing dams, in  
95 consultation with the Department of Fish and Game and the Massachusetts Technology  
96 Collaborative, that are capable of producing electricity through hydroelectricity. All such  
97 projects shall be assessed for their potential impact on stream flow, the environment, fish

98 passage, and wildlife habitat. Once identified, the commissioner shall undertake efforts to  
99 encourage the development of fish-friendly hydro-electric dams to reduce the dependence on  
100 non-renewable energy sources.

101 (i) The commissioner shall, in conjunction with the Executive Office of Public  
102 Safety and the Massachusetts Emergency Management Agency, review homeland security  
103 concerns relative to dam safety. The Committee shall send a written report to the Executive  
104 Office of Public Safety outlining such concerns by December 1, 2007.

105 SECTION 6. Construction.

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