HOUSE DOCKET, NO. 207 FILED ON: 1/13/2011

HOUSE . . . . . No. 265

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 adoption of the accompanying bill:

An Act relative to dam repair, removal and replacement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
William M. Straus	*10th Bristol*	*1/13/2011*
James B. Eldridge		*2/4/2011*
Bruce E. Tarr		*2/3/2011*
Thomas M. Stanley	*9th Middlesex*	*2/3/2011*
Christopher N. Speranzo	*3rd Berkshire*	*2/3/2011*
David B. Sullivan	*6th Bristol*	*2/4/2011*
Carolyn C. Dykema	*8th Middlesex*	*2/4/2011*
Stephen L. DiNatale	*3rd Worcester*	*2/1/2011*
William N. Brownsberger		*2/1/2011*
John J. Mahoney	*13th Worcester*	*2/4/2011*

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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:

SECTION 1. Definitions.

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

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

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

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

(e) Section 44 of chapter 253 is further amended by adding 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 of the Commonwealth; provided , that a minimal degree of impoundment needed for agricultural uses to retain wetlands and open water conditions may be allowed following controlled dismantlement or breaching of a dam, while removing any pediment to fish passage or alleviating threats to safety or property.

SECTION 2. Dam Removal.

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

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

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

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

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

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

SECTION 3. Enforcement.

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

SECTION 4. Administration.

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

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

(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 all hazardous dams that pose a threat to public health, safety, welfare, and property or the environment and when or whether they have been repaired, including, where applicable, the presence of polluted and/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 of the General Laws.

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

(a) The commissioner must ensure Emergency Action Plans are developed for all High Hazard Dams and Significant Hazard Dams, as defined in regulation. An Emergency Action Plan template shall be developed and available for all dam owners. The commissioner 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 commissioner shall develop an inspection schedule, as required by dam safety regulations, to ensure that all High Hazard, Significant Hazard, as Low Hazard Dams, as defined in regulation, are inspected no less than every five years.

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

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

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

SECTION 5. Construction.

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

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

Section 61.

(a) Any city or town which accepts the provisions of this section may elect to acquire by gift, purchase, eminent domain or otherwise, any dam, as defined by section 44 of chapter 253 of the General Laws, located within the town, 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. In connection with such an acquisition the town may, subject to appropriation, repair, reconstruct and make improvements to a town-owned dam as may be

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

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

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

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

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