

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Pacheco

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:

Mr. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00533 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 which are privately
3 owned or have been abandoned, and many of which no longer serve their original purpose or any other
4 purpose; and

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

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

9

10 SECTION 2. Definitions.

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

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

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

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

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

31

32 SECTION 3. Dam Removal.

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

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

37 (c) Section 46A of said chapter 253 is hereby amended in line 1 by inserting after the word "removed"
38 the following word:- "repaired,"

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

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

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

45

46 SECTION 4. Enforcement.

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

49

50 SECTION 5. Administration.

51 (a) The commissioner of the department of conservation and recreation (hereinafter referred to as
52 the commissioner), in conjunction with the commissioner of fish and game, the division of fish and

53 wildlife and the riverways program shall on or before December 1, 2007, complete a detailed inventory
54 of all dams on public and private property in the Commonwealth. The commissioner shall update such
55 dam inventory on an annual basis. The commissioner shall submit the inventory in a report to the joint
56 committee on environment, natural resources and agriculture and to the senate and house committees
57 on ways and means.

58 This report shall include the following detailed information:

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

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

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

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

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

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

72 (b) The commissioner must ensure Emergency Action Plans are developed for all High Hazard Dams
73 and Significant Hazard Dams, as defined in regulation. An Emergency Action Plan template shall be

74 developed and available for all dam owners. The commissioner shall ensure that necessary local and
75 state dam safety officials have immediate access to such Plans in the event of a potential dam failure.

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

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

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

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

89 (h) The commissioner shall identify opportunities in new and existing dams, in consultation with the
90 Department of Fish and Game and the Massachusetts Technology Collaborative, that are capable of
91 producing electricity through hydroelectricity. All such projects shall be assessed for their potential
92 impact on stream flow, the environment, fish passage, and wildlife habitat. Once identified, the
93 commissioner shall undertake efforts to encourage the development of fish-friendly hydro-electric dams
94 to reduce the dependence on non-renewable energy sources.

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

99

100 SECTION 6. Construction.

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