AN ACT RELATIVE TO THE REPAIR, REMOVAL AND REPLACEMENT OF DAMS

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.

Purpose and Findings.

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

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

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

SECTION 2. 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:- "man-made"

(c) Section 44 of chapter 253 of the General Laws is further amended by inserting in line 17 the 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 to retain wetlands and open water conditions may be allowed following controlled dismantlement or breaching of a dam, while removing any impediment to fish passage or alleviating threats to safety or property.

SECTION 3. 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:- "abandoned"

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

(c) Section 46A of said chapter 253 is hereby amended in line 1 by inserting 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 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 following words:- "or remove the dam"

SECTION 4. Enforcement.

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

SECTION 5. 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 December 1, 2007, 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 Dam 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.

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

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

(6) 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.

(b) 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.

(c) 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.

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

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

(f) 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.

(g) 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.

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

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

SECTION 6. 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.

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