

The Commonwealth of Massachusetts
In the Year Two Thousand and Nine.

AN ACT RELATIVE TO SUSTAINABLE WATER RESOURCES

Whereas, water is vital to public health, safety, welfare and the environment in the Commonwealth; and

Whereas, the Commonwealth's water resources are public resources that require sustainable management practices for economic growth, the well being and safety of our citizens, and protection of the natural environment; and

Whereas, it is the policy of the Commonwealth to protect the chemical, physical and biological integrity of its surface waters and their beneficial uses for the citizens of Massachusetts; and

Whereas, natural stream flows and adequate water levels are necessary for protection and procreation of fish and wildlife; maintenance of aquatic ecosystems, support of recreational activities; preservation of aesthetic values; protection of groundwater and public water supplies; the reduction of pollution; and to guard against climate change impacts; and

Whereas, it is in the public interest to adopt criteria and regulations to protect and restore stream flows and water levels, and for communities to create sustainable water resource funds.

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. Section 2 of Chapter 21G of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after "Department" the following definition:-

"Division", the division of fisheries and wildlife.

SECTION 2. Section 3 of said chapter 21G, as so appearing, is hereby further amended by inserting, in line 67, after the phrase "chapter twenty-one", the following sentences:—

"Pursuant to chapter 30A, the department, after consultation with the advisory committee and with the approval of the commission and the director of the division, shall adopt, and thereafter from time to time may amend, regulations establishing standards for restoring and maintaining stream flows, water levels and hydrologic regimes that are protective of natural aquatic life for all rivers and streams in the commonwealth and ensure a balance

among competing water withdrawals and uses, as well as preservation of the water resource itself. Said regulations, which shall incorporate the criteria established by the division pursuant to section 42A of chapter 131, shall be promulgated within 1 year of the division's establishment of the criteria and shall be used in the administration of this chapter. The department's regulations shall allow the department in consultation with the division to establish such standards protective of natural aquatic life for a specific river or stream."

SECTION 3. Section 7 of said chapter 21G, as so appearing, is hereby further amended by inserting at the end thereof the following sentence:-

(11) All feasible means to avoid, or if not possible, to minimize and mitigate impacts of the withdrawal on the natural environment have been taken.

(12) Consistency with the standards adopted by the department pursuant to section 3.

SECTION 4. Section 8 of said chapter, as so appearing, is hereby further amended by inserting, in lines 21-22, after word "applicant" the following sentences:-

(10) A demonstration that all feasible means to avoid, or if not possible, to minimize and mitigate impacts of the withdrawal on the natural environment have been taken or will be taken. Mitigation shall occur upstream in the same sub-basin as the withdrawal to the maximum extent practicable, and within the same basin as the withdrawal if such impacts cannot be offset in the same sub-basin. Permittees may enter into agreements with third parties, including the Department of Fish and Game, to implement mitigation required herein.

SECTION 5. Section 38 of chapter 40 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, after the second paragraph, the following sentences:-

Notwithstanding any general or special law to the contrary, no source of water supply and no lands necessary for protecting and preserving the purity of the water shall be sold by a city or town to a private corporation without first obtaining the advice and consent of the department of environmental protection.

SECTION 6. Section 39J of chapter 40 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, in line 15, after the word " protection," the following words:- "all costs or measures to ensure the long-term sustainability of the water supply,".

SECTION 7. Said chapter 40, as so appearing, is hereby further amended by inserting after section 39L the following section:-

Section 39M. Establishment of Sustainable Water Resource Fund.

Notwithstanding any general or special law to the contrary, a city, town, board of water or sewer commissioners, officers performing like duties, or water or sewer district may collect a reasonable fee to be used exclusively to offset and remedy impacts of water withdrawals, sewerage, or impairment of recharge of groundwater on the natural environment through depletion of ground or surface waters, and to sustain the quantity, quality and ecological integrity of waters of the commonwealth. Such measures for water return or water loss prevention shall include without limitation, local recharge of stormwater and wastewater, reuse of water, removal of infiltration and inflow, water savings achieved by retrofitting existing development with low impact development methods or water-saving devices, dam removal and land acquisition only for 1) wellhead protection of a public water supply or 2) for siting a decentralized wastewater treatment facility.

The fee, which may be based on retaining within the basin or saving at least one gallon, but no more than ten gallons, for every gallon of increased water or sewer demand, or net impairment of recharge shall be assessed in a fair and equitable manner, and separate uniform fees may be established for residential and commercial uses.

All such fees shall be deposited in a separate account classified as a "Sustainable Water Resource Fund." This Fund shall not be used for any purpose not provided in this section. The Fund may also receive monies from public and private sources as gifts, grants, and donations to further water conservation, water return or water loss prevention; from the federal government as reimbursements, grants-in-aid or other receipts on account of water infrastructure improvements; or fines, penalties or supplemental environmental projects. Any interest earned from whatever source shall be credited to and become part of said Fund.

SECTION 8. Chapter 131 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, after section 42, the following section:-

Section 42A. The division shall establish criteria to restore and maintain stream flows, water levels and hydrologic regimes that are protective of natural aquatic life for all rivers and streams in the commonwealth. Such criteria shall be based on the best scientific evidence and methodology available and shall be based on and provide for the natural variation of stream flows, and water levels adequate to ensure their chemical, biological and physical integrity. Within one year of the effective date of this act, the division shall adopt these criteria for all rivers and streams.

SECTION 9. Section 44 of chapter 253 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, after line 2 the following definition:-

“Abandoned”, a dam that has no identifiable owner or a dam whose owner fails to respond to the owner’s obligations pursuant to sections 44 through 48 inclusive. Abandonment of a dam shall not relieve the dam owner of liability under this act for maintenance of the dam or liability associated with property damage caused by the dam under the laws of the commonwealth. All persons liable pursuant to this section for which

the commonwealth incurs costs for inspection, repair or removal of an abandoned dam shall be liable to the commonwealth for such costs as set forth in this chapter.

SECTION 10. Said section 44 of said chapter 253, as so appearing, is hereby further amended by inserting in line 9 after the word “any” the following words:- “man-made”.

SECTION 11. Said section 44 of said chapter 253, as so appearing, is hereby further amended by inserting in line 17 the after the word “safety” the following words:- “or which could cause significant harm to the aquatic or riparian ecosystem”.

SECTION 12. Said section 44 of said chapter 253, as so appearing, is hereby further amended in line 32 by striking the words “environmental management” and inserting in place thereof the following words:- “conservation and recreation”.

SECTION 13. Said section 44 of said chapter 253, as so appearing, is hereby 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 14. Said section 44 of said chapter 253, as so appearing, is hereby further amended by striking, in line 10 the words “25 feet” and inserting in place thereof the following words:- “6 feet”.

SECTION 15. Said section 44 of said chapter 253, as so appearing, is hereby further amended by striking, in line 15, the word “50” and inserting in place thereof the following word:- “15”.

SECTION 16. Section 46 of said chapter 253, as so appearing, is hereby amended in line 14 by inserting after the word “unsafe” the following words:- “or abandoned”.

SECTION 17. Said section 46 of said chapter 253, as so appearing, is hereby further amended in line 22 by inserting after the words “bring the dam into a safe condition” the following words:- “or remove the dam”.

SECTION 18. Section 46A of said chapter 253, as so appearing, is hereby amended in line 1 by inserting after the word “removed” the following word:- “repaired,”

SECTION 19. Said section 46A of said chapter 253, as so appearing, is hereby further amended by striking, in line 7, the words “life and property,” and inserting in place thereof the following words:- “safety, property or the environment.”

SECTION 20. Section 47 of said chapter 253, as so appearing, is hereby amended by inserting in line 7 after the word “department.” the following sentence:- “Such action may include removal of the dam”.

SECTION 21. Section 47 of said chapter 253, as so appearing, is hereby amended by striking, in line 22, the word “\$500” and inserting in place thereof the following words:- “up to \$25,000 dollars.”

SECTION 22.

(a) The Commissioner of the Department of Conservation and Recreation (hereinafter referred to as the commissioner), in conjunction with the Commissioner of the Department of Fish and Game, the Division of Fisheries and Wildlife and the Riverways Program, shall on or before December 1, 2010, complete a detailed inventory of all dams on public and private property in the Commonwealth. The commissioner shall update such dam inventory every five years. 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 and when or whether they have been repaired;
 - (4) A comprehensive list of dams that no longer serve their original purpose or any significant public use and should be considered for removal.
 - (5) A comprehensive list of dams that are abandoned as defined in section 44 of chapter 253 of the General Laws.
 - (6) A prioritized, comprehensive list provided by the office of geographic and environmental information of all dams, including ownership and condition, whose existence, condition or operation impact freshwater animal and plant and resident or migratory fish species habitat or movement to be prepared in consultation with the department of fish and game , including the natural heritage and endangered species program.
- (b) The Commissioner shall ensure that an emergency action plan is 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 Energy and Environmental Affairs shall publish a written guidance to streamline the regulatory permitting process for dam removal by December 31, 2010.

(f) The secretary of the executive office of energy and environmental affairs shall ensure capital funds are available for dam assessment, repair and removal of all dams statewide.

(g) The secretary of the executive office of energy and environmental affairs shall create and implement a \$40,000,000 fund for private, state, and municipal 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.