

2012 -- H 7285

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LC00892
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO WATERS AND NAVIGATION -- INSPECTION OF DAMS AND
RESERVOIRS

Introduced By: Representatives Ferri, Walsh, Handy, Chippendale, and Silva

Date Introduced: January 31, 2012

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 WHEREAS, There are more than 670 dams in Rhode Island, most of which are privately
2 owned or have been abandoned, and many of which no longer serve their original purpose or any
3 other purpose; and

4 WHEREAS, Many dams have not been properly maintained and therefore pose an
5 immediate threat to public health, safety, welfare and the environment; and

6 WHEREAS, The Department of Environmental Management will have, by the end of
7 2012, completed a comprehensive inspection of most high and significant hazard dams; and

8 WHEREAS, Dam owners have the responsibility to maintain their dams in a safe
9 condition; and

10 WHEREAS, Since dam-related laws were adopted, the threat to public safety, real
11 property and the environment has increased due to deterioration of dams and development in
12 downstream areas over which dam owners do not necessarily have control; and

13 WHEREAS, The removal of dams serving no purpose would eliminate threats posed by
14 those dams and would protect the environment, restore wildlife habitat, enhance fish passage, and
15 eliminate regulatory requirements to register, inspect and repair useless dams;

16 SECTION 1. Section 46-19-1, 46-19-4 and 46-19-5 of the General Laws in Chapter 46-
17 19 entitled "Inspection of Dams and Reservoirs" are hereby amended to read as follows:

18 46-19-1. Periodical inspection required -- Records and reports. – [\(a\) The owner of](#)

1 any dam shall cause to be filed with the director of the department of environmental management
2 (director), on or before January 1, 2015, and periodically thereafter, as required by regulation, in
3 accordance with the hazard potential classification of the dam, as noted in the certificate of the
4 registration, on a form or forms prescribed by the director, a dam inspection report, containing
5 information relative to the present condition, safety and adequacy of the dam, options and costs to
6 correct any deficiencies identified, including repair and removal, and such other information as
7 the director may require by regulation, signed by a registered professional civil engineer.

8 (b) Failure to file a dam inspection form by the time prescribed, according to the
9 classification of the dam, shall subject the owner to fines prescribed by regulation.

10 (c) The director of the department of environmental management shall cause to be made
11 a thorough inspection of every dam and reservoir in the state as often as may be necessary to keep
12 himself or herself informed of the condition thereof; and shall make and keep a record of the
13 result of all dam inspections ~~the inspection~~, with whatever knowledge the director shall obtain in
14 reference to each dam or reservoir, and shall make an annual report of his or her doings in his or
15 her office in the month of January to the governor.

16 **46-19-4. Investigations and orders as to unsafe dams and reservoirs.** -- (a) The
17 director of the department of environmental management, on application made to him or her in
18 writing by any person owning or representing property liable to injury or destruction by the
19 breaking of any dam or reservoir, or on an application made by any mayor or city council of any
20 city, or by the town council of any town, on account of danger of loss of life or of injury to any
21 highway or bridge therein, from the breaking of any dam or reservoir, or, without the complaint,
22 whenever he or she shall have cause to apprehend that any dam or reservoir is unsafe, shall
23 forthwith view and thoroughly examine the dam or reservoir, or cause the dam or reservoir to be
24 viewed and examined. And if in the judgment of the director the dam or reservoir be not
25 sufficiently strong to resist the pressure of water upon it, or if from any other cause the director
26 shall determine the dam or reservoir to be unsafe, or if in his or her judgment there is reasonable
27 cause to believe that danger to life or property may be apprehended from the unsafe dam or
28 reservoir, the director shall determine whether the water in the reservoir shall be drawn off in
29 whole or in part, and what alterations, including additions, ~~and~~ repairs, or removal are necessary
30 to be made to the dam or reservoir to make the dam or reservoir safe, and shall forthwith in
31 writing under his or her hand notify the owner or person having control of the dam or reservoir to
32 cause the additions, alterations, ~~and~~ repairs ~~in~~ or removal of the dam or reservoir to be made
33 within a time to be limited in the notice; and may order the water in the reservoir to be drawn off,
34 in whole or in part, as the director may determine.

1 (b) Any order or notice issued by the director shall be eligible for recordation under
2 chapter 13 of title 34. The director shall forward the original order or notice to the city or town
3 wherein the subject property is located and the order or notice shall be recorded in the land
4 evidence records in the city or town wherein the subject property is located. Any subsequent
5 transferee of that property shall be responsible for complying with the requirements of the order
6 or notice. Upon satisfactory completion of the requirements of the order or notice, the director
7 shall provide written notice of the same, which notice shall be similarly eligible for recordation.
8 The original written notice shall be forwarded to the city or town wherein the subject property is
9 located and the notice of satisfactory completion shall be recorded in the land evidence records in
10 the city or town where in the subject property is located.

11 (c) If such order is not carried out within the time specified, or if the owner of the dam
12 cannot be determined, the director of the department of environmental management or the
13 director's duly authorized agents may carry out the actions to mitigate the unsafe condition as
14 required by the order, provided the director has determined that an emergency exists and the
15 safety of life and/or property is endangered. The director is hereby authorized to assess the costs
16 of such action, including the use of deed restrictions, against the person owning or having care
17 and control of the dam.

18 **46-19-5. Judicial enforcement of order to make dam or reservoir safe. --** (a) If the
19 owner or person having the control of any dam or reservoir, who shall be required to draw off the
20 water, or a portion of the water, in any reservoir, or to make alterations in any reservoir, or repairs
21 thereon or additions thereto, or removal thereof in the manner prescribed in section 46-19-4, shall
22 not forthwith proceed to comply with the requirement, or shall not prosecute the work, when
23 commenced, with reasonable expedition, the director of the department of environmental
24 management shall make out a complaint in which he or she shall set forth the condition of the
25 dam or reservoir, and the steps he or she has taken to cause the water to be drawn off therefrom
26 and for the alteration, ~~or~~ repair or removal thereof, or to have additions made thereto to secure the
27 safety of the dam or reservoir, and the default of the owner or person having control thereof in
28 drawing off the water, repairing, removing, altering, or in making an addition to the dam or
29 reservoir, and that the safety of life and property is endangered by the default, and shall subscribe
30 the default, and deliver the complaint to the attorney general or to an assistant attorney general,
31 who shall present the complaint to the supreme court or the superior court, with a petition in the
32 nature of an information ex officio, praying that the person owning or controlling the dam or
33 reservoir may be required and ordered forthwith to comply with the requirements of the director
34 of the department of environmental management theretofore made in the premises, or with such

1 other orders as may be made by the court, to secure all persons having reasonable cause to
2 apprehend injury to life or property from the unsafe condition of the dam or reservoir.

3 (b) Upon the filing of the petition, a citation shall issue to the person controlling or
4 owning the dam, commanding him or her to appear at a time and place therein named, to show
5 cause, if any exists, why the relief prayed for shall not be granted; and the court shall summarily
6 proceed to hear the cause, and upon hearing the parties, or by proceeding ex parte, if the
7 respondent fails to appear, the court may pass such order and decree in the premises as will
8 effectually secure the persons interested from danger or loss from the breaking of the dam or
9 reservoir complained of; and the court may enforce the orders and decrees by injunction, process
10 for contempt, by sequestration, or by such other process as may be applicable in those cases.

11 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO WATERS AND NAVIGATION -- INSPECTION OF DAMS AND
RESERVOIRS

1 This act would make a number of procedural and substantive changes to the powers of
2 the department of environmental management with respect to the inspection and repair of dams
3 and reservoirs.

4 This act would take effect upon passage.

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