

HOUSE No. 5924

The Commonwealth of Massachusetts

House of Representatives, July 8, 1970.

The committee on Bills in the Third Reading, to whom was referred the Bill transferring the duties of the county commissioners, as related to the safety of dams, to the Department of Public Works, Division of Waterways (House, No. 1246), report recommending that the same be amended by the substitution of the accompanying bill (House, No. 5924).

For the committee,

RAYMOND M. LaFONTAINE.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy.

AN ACT TRANSFERRING THE CONSTRUCTION, SUPERVISION AND MAINTENANCE OF DAMS AND RESERVOIRS FROM THE COUNTY COMMISSIONERS TO THE COMMISSIONER OF PUBLIC WORKS.

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. Section 33 of chapter 253 of the General Laws, as
2 appearing in the Tercentenary Edition, is hereby amended by
3 striking out, in lines 5 and 6, the words "county commissioners
4 of the county where such way is located" and inserting in place
5 thereof the words: — commissioner of public works.

1 SECTION 2. Said chapter 253 is hereby further amended by
2 striking out sections 35 to 38, inclusive, as so appearing, and
3 inserting in place thereof the following four sections: —

4 *Section 35.* Said commissioner may, after a hearing, order such
5 alteration, repairs or change of grade of such ways as will in his
6 judgment enable the petitioner to raise, erect and maintain such
7 dam without overflowing or otherwise injuring such ways, and
8 they may give written direction and authority to the petitioner to
9 make at his own expense such alterations, changes of grade and
10 repairs within a reasonable time. He shall record all such orders
11 and shall cause certified copies thereof to be filed and recorded in
12 the office of the clerk of each town in which such alterations,
13 changes of grade or repairs are ordered.

14 *Section 36.* Said commissioner shall assess and order the
15 petitioner to pay all damages sustained by any person or town by
16 reason of the alterations, changes of grade or repairs ordered by
17 him, and any person or town aggrieved by such assessment may,
18 on application within one year from the entry of such order, have
19 the damages assessed by a jury in the manner provided in chapter
20 seventy-nine.

21 *Section 37.* The costs of proceedings under the four preceding

22 sections shall be paid by the petitioners, who may be required by
23 the commissioner to give bond with sufficient sureties for the
24 payment thereof.

25 *Section 38.* The order of the commissioner, duly issued under
26 section thirty-five, shall authorize the petitioner to do all acts
27 necessary to be done in compliance therewith; and if it is shown
28 that the petitioner has substantially complied with such order, no
29 indictment shall be maintained for the flowage of, or injury to,
30 the ways mentioned in such order, which may be caused by the
31 dam.

1 SECTION 3. Said chapter 253 is hereby further amended by
2 striking out sections 44 to 49, inclusive, as so appearing, and
3 inserting in place thereof the following six sections: —

4 *Section 44.* A reservoir dam or mill dam shall not be
5 constructed or materially altered until plans and specifications of
6 the proposed work have been filed with and approved by the
7 commissioner of public works. The commissioner shall retain and
8 record such plans and specifications, and shall inspect the work
9 during its progress; and if at any time it appears that the plans
10 and specifications are not faithfully adhered to, he may cause
11 such work to be inspected at the expense of the owners in the
12 supervision of the work. Upon a refusal of the owners or their
13 agents to adhere to said plans and specifications, said commis-
14 sioner may order the discontinuance of the work. This and the six
15 following sections shall not apply to small dams, constructed for
16 irrigation or for other purposes, the breaking of which would
17 involve no risk to life or property, nor to standpipes or tanks, nor
18 to a dam where the area draining into the pond formed thereby
19 does not exceed one square mile, unless the dam is more than ten
20 feet in height above the natural bed of the stream at any point, or
21 unless the quantity of water which the dam impounds exceeds
22 one million gallons.

23 *Section 45.* Said commissioner shall, as often as once in two
24 years, cause a thorough examination to be made of every
25 reservoir, reservoir dam and mill dam by the breaking of which
26 loss of life or damage to a road, bridge or any public utility is
27 likely to be caused, and he shall at any time cause such
28 examination to be made upon written application by the mayor

29 and aldermen or the city council of a city or the selectmen of a
30 town where such damage is likely to be caused. Any party whose
31 property is likely to be damaged by the breaking of any such
32 structure may make a written application to the commissioner,
33 setting forth the facts and the ownership of such structure which
34 is believed to be unsafe, and the commissioner may thereupon
35 cause said structure to be examined. If upon examination the
36 structure is deemed safe, the costs of such application and
37 examination may be ordered paid by the party making the
38 application. Ownership of the structure shall be ascertained, and,
39 so far as possible, examinations shall be made in cooperation with
40 the owner or his agent.

41 *Section 46.* If upon such examination the structure is not, in
42 the judgment of said commissioner, sufficiently strong to resist
43 the action of the water under any circumstances which may
44 reasonably be expected to occur, he shall determine and direct
45 what alterations or repairs are required to make the structure
46 permanent and secure, and shall in writing order the owners
47 thereof to make such alterations or repairs within a reasonable
48 time, the results of such examination and the orders thereon
49 being duly recorded and filed by said commissioner.

50 *Section 47.* If, after notice in writing to the owner of a
51 reservoir or dam which has been so examined and adjudged to be
52 unsafe, the said owner refused or neglects to make such
53 alterations or repairs as the commissioner may order, he may, at
54 the expense of the commonwealth, cause such reservoir or dam to
55 be altered and repaired or any part thereof removed or the water
56 drawn off, whichever they may consider necessary for the safety
57 of life, property, roads, bridges, public utilities or the stream
58 below. After such removal, no structure shall be erected except in
59 compliance with the three preceding sections, and after the water
60 has been drawn off, the reservoir shall not be filled again until the
61 orders of the commissioner have been complied with.

62 *Section 48.* Said commissioner shall make such orders as he
63 may deem just as to the payment by the owner, commonwealth
64 or other party of the costs and expenses incurred by them under
65 the three preceding sections, and if the reservoir or dam was
66 adjudged to be unsafe, said costs and expenses may be ordered
67 paid by the owner, with interest, from the time they were paid by

68 the commonwealth. Notice shall be given the treasurer of the
69 commonwealth and the owner or other party of the amount due
70 the commonwealth.

71 *Section 49.* No order, approval, request or advice of the
72 commissioner shall impair the legal duties and obligations of the
73 owners of reservoirs, reservoir dams or mill dams or their liability
74 for the consequences of their illegal acts or of the neglect or
75 mismanagement of their servants or agents.

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