

By Mr. Lombardi of Easton, petition of Leon J. Lombardi for legislation to regulate the release of water from artificial impoundments. Natural Resources and Agriculture.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT REGULATING THE RELEASE OF WATER FROM ARTIFICIAL IMPOUNDMENTS.

*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. Chapter 253 of the General Laws is hereby  
2 amended by adding the following sections:

3 *Section 65.* The policy of the Commonwealth is that dams be  
4 maintained and operated so as not to jeopardize the public interest  
5 in flood protection, fish and wildlife habitat, water supplies for  
6 consumption, power generation, and pollution assimilation, water  
7 quality, ground water levels, recreational opportunities, avoidance  
8 of unsightly shorelines, and the property values of riparian pro-  
9 prietors. The public interest therefore requires that artificial im-  
10 poundments control natural water flows only under adequate  
11 regulation.

12 *Section 66.* For the purpose of this Act:

13 (a) "commissioner" means the commissioner of the department  
14 of environmental quality engineering;

15 (b) "dam" means an artificial structure designed to impede the  
16 flow of water, that extends more than 10 feet above the natural bed  
17 of the water course, that can impound more than one million  
18 gallons of water, or the reservoir of which drains an area of more  
19 than one square mile;

20 (c) "reservoir" means a body of water, the depth of which is  
21 determined solely or in part by a dam;

22 (d) "riparian proprietor" means an owner of real estate that

23 bounds or contains a body of water or a water course;

24 (e) "normal water level" means the standard height for water in  
25 a reservoir, to be determined by the commissioner under section  
26 sixty-eight. The level may include variation for seasonal fluctua-  
27 tion and use of the water;

28 (f) "person" shall mean a legal entity, including but not limited  
29 to an individual, firm, association, partnership, corporation, trust,  
30 municipality, quasi-municipal corporation, state agency, or feder-  
31 al agency.

32 *Section 67.* The commissioner may upon his own motion and  
33 shall upon:

34 (a) the request of the commissioner of the department of fish,  
35 wildlife, and recreational vehicles;

36 (b) the request of the mayor or board of selectment of a municipi-  
37 pality in which any part of the dam or reservoir is located;

38 (c) petition of ten percent of the riparian proprietors of a reser-  
39 voir; or

40 (d) petition of ten percent of the riparian proprietors within one  
41 mile downstream of a dam;

42 conduct a public hearing for the purpose of establishing a normal  
43 water level for the reservoir and minimum flow below the dam. Not  
44 less than thirty days before the hearing, the commissioner shall  
45 provide written notice of the time and place of the hearing to the  
46 owner of the dam and all persons eligible to petition for such a  
47 hearing. The commissioner shall also publish notice in a newspaper  
48 of general circulation in municipalities in which any part of the  
49 dam or reservoir is located. If any person cannot be determined or  
50 notified with reasonable effort, the publication in a newspaper of  
51 general circulation shall be deemed sufficient notice.

52 At the hearing the commissioner shall solicit oral or written  
53 testimony from any person for the purpose of setting a normal  
54 water level for the reservoir and minimum and maximum water  
55 releases from the dam, including but not limited to the water level  
56 and downstream flow necessary:

57 (a) to prevent conditions hazardous to riparian owners or the  
58 public;

59 (b) to maintain and improve fish and wildlife habitat;

60 (c) to accommodate foreseeable precipitation and runoff;

- 61 (d) to prevent erosion or unsightly exposure of shorelines;  
62 (e) to provide recreational opportunities and public access to  
63 the water for recreation;  
64 (f) to maintain and improve water quality in the reservoirs and  
65 downstream from the dam;  
66 (g) to maintain groundwater levels;  
67 (h) to allow productive use of water resources;  
68 (i) to accommodate historic fluctuations of water levels caused  
69 by climatic variation or use of the water.

70 Testimony may include any information relevant to these needs,  
71 including but not limited to legislative authorization, historic pur-  
72 poses and proposed purposes, owners, uses of the dam and the  
73 effect of uses on water levels and flow.

74 *Section 68.* Based on the evidence heard at the hearing, the  
75 commissioner shall, within sixty days after adjournment of the  
76 hearing, make written findings and issue an order to the owner of  
77 the dam establishing a normal water level and regulating the  
78 release of water through the dam. The order shall include provision  
79 for seasonal and other necessary fluctuation and may include such  
80 other provisions as necessary to protect riparian proprietors and  
81 public health, safety, and welfare. The commissioner shall cause a  
82 copy of the order to be delivered to the dam owner and to each  
83 petitioner, if any, and shall file the order in the appropriate registry  
84 of deeds.

85 Except as otherwise provided, provisions of this act are subject  
86 to the rules of conduct of adjudicatory proceedings, promulgated  
87 pursuant to Chapter 30A of the General Laws.

88 *Section 69.* Any person described in section sixty-seven may at  
89 any time petition the commissioner to amend or suspend the order  
90 for a period of not more than thirty days. The commissioner shall  
91 grant the petition if he deems the amendment or suspension to be in  
92 the public interest. A person may petition for amendments of  
93 longer than thirty days, as described in section sixty-seven.

94 *Section 70.* After issuance of an order under section sixty-seven,  
95 the owner shall not operate or maintain the dam in any manner  
96 that will cause a violation of the order. However, no owner shall be  
97 deemed to have violated the order where the infraction is the result  
98 of unforeseeable meteorological conditions and could not be

99 avoided by undertaking reasonable steps to regulate the flow of  
100 water through or over the dam. The burden of proof is on the  
101 owner to justify the applicability of this exception.

102 After a reasonable attempt to notify the owner, persons author-  
103 ized by the commissioner may cross privately owned lands, if  
104 necessary, to enforce this act.

105 *Section 71.* The commissioner, any riparian proprietor, or any  
106 person injured by violation of an order may commence an action in  
107 the superior courts in the county in which any part of the dam or  
108 the reservoir is located to enjoin the violation.

109 Any person injured by the violation of an order under this act  
110 has a civil cause of action for damage against any person causing  
111 the violation. The legal duties and obligations of the owner of the  
112 dam for the consequences of his illegal act or neglect, or misman-  
113 agement of his servants or agents, shall not be relieved by any  
114 order, advice, or act of the commissioner.

115 *Section 72.* After making a reasonable attempt to notify the  
116 dam owner of a violation of an order, or of an imminent violation,  
117 the commissioner may take all necessary steps, including but not  
118 limited to operation of the dam, to ensure compliance with the  
119 order. The commissioner may file a petition with the owner to  
120 receive compensation for costs incurred in enforcing the order.  
121 From the date of filing the petition, the commissioner shall have a  
122 lien on the dam and the land underlying and adjoining the dam in  
123 the amount claimed in the petition. A lien under this section shall  
124 not extend to any amount incurred more than three years before  
125 the filing of the petition.

1 SECTION 2. Section nine of chapter two hundred fifty-three of  
2 the General Laws, as amended by section three hundred and one of  
3 chapter one hundred and fourteen of the acts of nineteen hundred  
4 and seventy-three, is hereby repealed.

1 SECTION 3. If a part of this act is invalid, all valid parts that  
2 are severable from the invalid part remain in effect. If a part of the  
3 act is invalid in one or more of its applications, the part remains in  
4 effect in all valid applications that are severable from the invalid  
5 applications.