SENATE DOCKET, NO. 637 FILED ON: 1/19/2011

SENATE . . . . . No. 380

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the repair, removal and replacement of dams..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	
Stephen L. DiNatale	*3rd Worcester*
Carolyn C. Dykema	*8th Middlesex*

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SENATE . . . . . No. 380

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 380) of Karen E. Spilka, Stephen L. DiNatale and Carolyn C. Dykema, for legislation relative to the repair, removal and replacement of dams [Joint Committee on Environment, Natural Resources and Agriculture].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *431* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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. 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;

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;

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

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to ensure that all dams in the Commonwealth are promptly inspected and, where appropriate, repaired or removed, therefore it is hereby declared to be an emergency law, necessary for the immediate protection of public health, safety, welfare, and the environment.

SECTION 2. Section 44 of chapter 253 of the General Laws, as appearing in 2008 Official Edition, 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.

SECTION 3. Said section 44 of said chapter 253, as so appearing, is hereby amended by adding after the definition of "Department" the following new definition: -

"High hazard potential dam", a dam located where failure will likely cause loss of life and serious damage to home(s), industrial or commercial facilities, important public utilities, main highway(s) or railroad(s).

SECTION 4. Said section 44 of said chapter 253, as so appearing, is hereby amended by inserting after the definition of "Owner" the following two new definitions: -

"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.

"Significant hazard potential dam", a dam located where failure may cause loss of life and damage home(s), industrial or commercial facilities, secondary highway(s) or railroad(s) or cause interruption of use or service of relatively important facilities.

SECTION 5. Said section 44 of said chapter 253, as so appearing, is further amended by inserting, in line 9, after the word "any" the following words:- "man-made"

SECTION 6. Said section 44 of said chapter 253, as so appearing, is further amended by striking out, in lines 10-15, inclusive, the following words:- ", and which (1) is 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation or (2) has an impounding capacity at maximum water storage elevation of 50 acre feet or more."

SECTION 7. Said section 44 of said chapter 253, as so appearing, is further amended by inserting, in line 17, after the words "property or safety" the following words:- "or which could cause environmental harm".

SECTION 8. Said section 44 of said chapter 253, as so appearing, is further amended by striking out, in line 32, the

words "environmental management" and inserting in place thereof the following words:- "conservation and recreation"

SECTION 9. Dam Removal. Section 46 of said chapter 253 of the General Laws, as appearing in 2008 Official Edition, is hereby amended by inserting, in line 14, after the words "to be unsafe" the following words:-

", threaten the environment, be abandoned, not adequately maintained, or no longer serve its original purpose or any useful purpose as determined by the commissioner of the department".

SECTION 10. Said section 46 of said chapter 253, as so appearing, is further amended, in line 19, by striking out the words, "safety and property" and inserting in place thereof the following words: "safety, property or the environment".

SECTION 11. Said section 46 of said chapter 253, as so appearing, 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".

SECTION 12. Section 46A of said chapter 253, as appearing in the 2008 Official Edition, is hereby amended, in line 1, by inserting after the word "removed" the following word:- "repaired,"

SECTION 13. Said section 46A of said chapter 253, as so appearing, is further amended by inserting, in line 5, after the words "the owner approving" the following words:- "or removing"

SECTION 14. Said section 46A of said chapter 253, as so appearing, is further amended, in line 7, by striking out the words "life and property," and inserting in place thereof the following words:- "safety, property or the environment."

SECTION 15. Section 47 of said chapter 253, as appearing in the 2008 Official Edition, is hereby amended by inserting, in line 6, after the words "operational condition" the following words:- "or remove the dam"

SECTION 17. Said section 47 of said chapter 253, as so appearing, is further amended by inserting, in line 18, after the words “safety or property.” the following words:- “or the environment.”

SECTION 18. Section 47 of said chapter 253, as so appearing, is hereby amended by striking out, in lines 22 and 23, the words “be fined an amount not to exceed $500 for each offense” and inserting in place thereof the following words:-

“be punished by a fine of not more than $25,000 if the offense is at a high hazard potential dam or a significant hazard potential dam, as determined by the department, or shall be punished by a fine of not more than $5,000 if the offense is at any other dam”

SECTION 19. (a) The commissioner of the department of conservation and recreation, in conjunction with the commissioner of fish and game, the division of fisheries and wildlife and the riverways program shall on or before December 1, 2013, complete a detailed report of all dams deemed jurisdictional under sections 44 through 48, inclusive, of chapter 253 of the General Laws, on public and private property in the Commonwealth. The commissioner of the department of conservation and recreation shall submit the 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, or listed as abandoned if an owner or operator cannot be ascertained, and the location of every dam, where such ownership or operation has been registered with the Office of Dam Safety.

(2) 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 or are in the process of being removed.

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

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

(5) 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.

SECTION 20. 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.