

1 H.482

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation; regulation of stream flow; stream alteration

6 Statement of purpose: This bill proposes to require the secretary of natural  
7 resources to consult with a fisheries biologist from the department of fish and  
8 wildlife regarding all proposed stream alterations and how the alteration will  
9 impact fish life, wildlife, or aquatic or wildlife habitat.

10 An act relating to stream alteration

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 10 V.S.A. § 1021 is amended to read:

13 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

14 (a) A person shall not change, alter, or modify the course, current, or cross  
15 section of any watercourse or of designated outstanding resource waters,  
16 within or along the boundaries of this state either by movement, fill, or by  
17 excavation of ten cubic yards or more in any year, unless authorized by the  
18 secretary.

19 (b) This subchapter shall not apply to emergency protective measures  
20 necessary to preserve life or to prevent severe imminent damage to public or

1 private property, or both. The protective measures shall be limited to the  
2 minimum amount necessary to remove imminent threats to life or property,  
3 and shall have prior approval from a member of the municipal legislative body  
4 and shall be reported to the secretary by the legislative body within 72 hours  
5 after the onset of the emergency. Prior to performing the proposed emergency  
6 protective measures, the legislative body shall notify the secretary of the vote  
7 to approve the emergency protective measures. Within 24 hours of the notice  
8 provided by the legislative body, the secretary shall review the proposed  
9 emergency protective measures and approve them or require amendment of the  
10 protective measures in order to minimize damage to fish, wildlife, or aquatic  
11 habitat. Upon approval of the secretary, the legislative body may perform the  
12 emergency protective measures.

13 (c) No person shall remove gravel from any watercourse primarily for  
14 construction or for sale.

15 (d) Notwithstanding subsection (c) of this section, a riparian owner may  
16 remove up to 50 cubic yards of gravel per year from that portion of a  
17 watercourse running through or bordering on the owner's property, provided:

18 (1) the material shall be removed only for the owner's use on the  
19 owner's property;

20 (2) the material removed shall be above the waterline; and

1           (3) at least 72 hours prior to the removal of 10 cubic yards, or more, the  
2 landowner shall notify the secretary. The secretary shall:

3                 (A) approve the removal;

4                 (B) deny the removal if the removal will destroy or significantly  
5 damage aquatic or wildlife habitat; or

6                 (C) require amendment of the proposed removal, if performance of  
7 the amended removal will avoid destruction or significant damage to aquatic or  
8 wildlife habitat;

9           (4) however, if the portion of the watercourse in question has been  
10 designated as outstanding resource waters, then the riparian owner may so  
11 remove no more than 10 cubic yards of gravel per year, and must notify the  
12 secretary at least 72 hours prior to the removal of any gravel.

13           (e) This subchapter does not apply to dams subject to chapter 43 of this title  
14 nor to highways or bridges subject to 19 V.S.A. § 10(12).

15           (f) This subchapter shall not apply to accepted agricultural or silvicultural  
16 practices, as defined by the secretary of agriculture, food and markets, or the  
17 commissioner of forests, parks and recreation, respectively.

18           (g) Nothing in this chapter shall prohibit, in the normal use of land, the  
19 fording of or access to a watercourse by a person with the right or privilege to  
20 use the land.

1 (h)(1) Notwithstanding any other provisions of this section, recreational  
2 mineral prospectors:

3 (A) shall not operate suction dredges in any watercourse;

4 (B) may operate sluice boxes in any watercourse, provided:

5 (i) a request for approval to conduct mineral prospecting shall be  
6 filed with and approved by the secretary; and

7 (ii) mineral prospecting shall not be conducted on private land  
8 without landowner permission, or on state land without permission from the  
9 secretary.

10 (2) Hand panning prospecting techniques shall be exempt from this  
11 subchapter.

12 (i) Prior to approving emergency protective measures under subsection (b)  
13 of this section or approving gravel removal under subsection (d) of this section,  
14 the secretary shall consult with a fisheries biologist from the department of fish  
15 and wildlife regarding the impact of the proposed protective measure or gravel  
16 removal on fish life, wildlife, or aquatic or wildlife habitat.

17 Sec. 2. 10 V.S.A. § 1023 is amended to read:

18 § 1023. INVESTIGATION, PERMIT

19 (a) Upon receipt of an application, the secretary shall cause an investigation  
20 of the proposed change to be made. Prior to making a decision, a written  
21 report shall be made by the secretary concerning the effect of the proposed

1 change on the watercourse. Prior to making a decision under this section, the  
2 secretary shall consult with a fisheries biologist from the department of fish  
3 and wildlife regarding the impact of the proposed change on fish life, wildlife,  
4 or aquatic or wildlife habitat. The permit shall be granted, subject to such  
5 conditions determined to be warranted, if it appears that the change:

6 (1) will not adversely affect the public safety by increasing flood  
7 hazards;

8 (2) will not significantly damage fish life ~~or~~, wildlife, or aquatic or  
9 wildlife habitat;

10 (3) will not significantly damage the rights of riparian owners; and

11 (4) in case of any waters designated by the board as outstanding  
12 resource waters, will not adversely affect the values sought to be protected by  
13 designation.

14 (b) The reasons for the action taken under this section shall be set forth in  
15 writing to the applicant. Notice of the action of the secretary shall also be sent  
16 to the selectmen of the town in which the proposed change is located, and to  
17 each owner of property which abuts or is opposite the land where the alteration  
18 is to take place.

19 (c) If the local legislative body and planning commission determine in  
20 writing by majority vote of each that gravel in a watercourse is threatening life  
21 or property, due to increased potential for flooding, and that the removal of

1 gravel is necessary to prevent the threat to life or property, and if a complete  
2 permit application has been submitted to the secretary, requesting authority to  
3 remove gravel in the minimum amount necessary to remove threats to life or  
4 property, the local legislative body and the planning commission may request  
5 an expedited review of the complete permit application by notifying the  
6 secretary and providing copies of their respective decisions. If the secretary  
7 fails to approve or deny the application within 45 calendar days of receipt of  
8 notice of the decisions, the application shall be deemed approved and a permit  
9 shall be deemed to have been granted. Gravel removed shall be used only for  
10 public purposes, and cannot be sold, traded, or bartered. The fact that an  
11 application for a permit has been filed under this subsection shall not limit the  
12 ability to take emergency measures under subsection 1021(b) of this title. For  
13 the purposes of section 1024 of this title, if a permit has been deemed to have  
14 been granted under this subsection, that permit shall constitute a decision of the  
15 secretary.

16 Sec. 3. EFFECTIVE DATE

17 This act shall take effect on passage.