

1 H.546

2 Introduced by Representative Browning of Arlington

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; stream alteration

6 Statement of purpose: This bill proposes to require the secretary of natural  
7 resources to adopt guidelines for emergency stream alteration. The bill would  
8 require municipalities to perform emergency stream alteration measures in a  
9 manner consistent with the agency of natural resources stream alteration  
10 guidelines for emergency protective measures. In addition, the bill would  
11 require the secretary of natural resources to train additional agency staff to  
12 perform necessary stream alteration and water quality review during a state of  
13 emergency. The bill would also authorize the secretary of natural resources to  
14 enter into reciprocal mutual aid agreements or compacts with other states to  
15 assist in addressing watershed, river management, and transportation system  
16 issues that arise during a state of emergency.

17 An act relating to guidelines and technical assistance for emergency stream  
18 alteration activities

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

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

2 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

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

8 (b) This subchapter shall not apply to emergency protective measures  
9 necessary to preserve life or to prevent severe imminent damage to public or  
10 private property, or both. The protective measures shall:

11 (1) be limited to the minimum amount necessary to remove imminent  
12 threats to life or property; ~~shall;~~

13 (2) have prior approval from a member of the municipal legislative body  
14 ~~and shall;~~

15 (3) be reported to the secretary by the legislative body within ~~72~~ 24  
16 hours after the onset of the emergency; ~~and~~

17 (4) be implemented in a manner consistent with the agency of natural  
18 resources stream alteration guidelines for emergency protective measures  
19 established under subsection 1023(d) of this title.

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

3 \* \* \*

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

5 § 1023. INVESTIGATION, PERMIT

6 (a) Upon receipt of an application, the secretary shall cause an investigation  
7 of the proposed change to be made. Prior to making a decision, a written  
8 report shall be made by the secretary concerning the effect of the proposed  
9 change on the watercourse. The permit shall be granted, subject to such  
10 conditions determined to be warranted, if it appears that the change:

11 (1) will not adversely affect the public safety by increasing flood  
12 hazards;

13 (2) will not significantly damage fish life or wildlife;

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

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

18 (b) The reasons for the action taken under this section shall be set forth in  
19 writing to the applicant. Notice of the action of the secretary shall also be sent  
20 to the selectmen of the town in which the proposed change is located, and to

1 each owner of property which abuts or is opposite the land where the alteration  
2 is to take place.

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

1       (d) The secretary shall adopt by procedure stream alteration guidelines for  
2       emergency protective measures performed under subsection 1021(a) of this  
3       title. The guidelines shall address recommended methods to be used in times  
4       of emergency for constructing, repairing, or modifying infrastructure in a  
5       manner that contemplates stream dynamics, fluvial erosion, and other hazards  
6       presented by the watercourse on which the emergency protective measures are  
7       to be performed.

8       (e) The secretary shall train agency staff employed in an agency division  
9       other than the watershed management division to perform necessary stream  
10       alteration and water quality review when a state of emergency is declared  
11       under 20 V.S.A. § 9.

12       (f) The secretary is authorized to enter into reciprocal mutual aid  
13       agreements or compacts with other states in the region to assist the secretary  
14       and the state in addressing watershed, river management, and transportation  
15       system issues that arise when a state of emergency is declared under  
16       20 V.S.A. § 9.

17       Sec. 3. EFFECTIVE DATE

18       (a) This section and Sec. 2 (ANR stream alteration guidelines for  
19       emergency protective measures; agency training; mutual aid agreements) of  
20       this act shall take effect on passage.

- 1        (b) Sec. 1 (stream alteration; emergency protective measures) of this act
- 2        shall take effect on January 1, 2013.