

1 H.483

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 a person removing timber
7 from below the high watermark of a watercourse to obtain a stream alteration
8 permit from the secretary of natural resources.

9 An act relating to requiring a stream alteration permit for removal of timber
10 from watercourses

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

12 Sec. 1. 10 V.S.A. chapter 41, subchapter 2 is amended to read:

13 Subchapter 2. Alteration of Streams

14 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

15 (a)(1) A person shall not change, alter, or modify the course, current, or
16 cross section of any watercourse or of designated outstanding resource waters,
17 within or along the boundaries of this state either by movement, fill, or by
18 excavation of ten cubic yards or more in any year, unless authorized by the
19 secretary.

1 (2) A person shall not remove timber from below the high watermark of
2 a watercourse unless authorized by the secretary.

3 (b) This subchapter shall not apply to emergency protective measures
4 necessary to preserve life or to prevent severe imminent damage to public or
5 private property, or both. The protective measures shall be limited to the
6 minimum amount necessary to remove imminent threats to life or property,
7 shall have prior approval from a member of the municipal legislative body and
8 shall be reported to the secretary by the legislative body within ~~72~~ 24 hours
9 after the onset of the emergency.

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

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

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

17 (2) the material removed shall be above the ~~waterline~~ high
18 watermark; and

19 (3) at least 72 hours prior to the removal of 10 cubic yards, or more, the
20 landowner shall notify the secretary;

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

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

7 (f) ~~This~~ Except as required under subdivision (a)(2) of this section, this
8 subchapter shall not apply to accepted agricultural or silvicultural practices, as
9 defined by the secretary of agriculture, food and markets, or the commissioner
10 of forests, parks and recreation, respectively.

11 * * *

12 § 1022. APPLICATION FOR ALTERATION OR REMOVAL OF TIMBER

13 A person proposing to change, alter, or modify the course, current, or cross
14 section of a watercourse or removing timber from below the high watermark of
15 a river shall apply in writing to the secretary for a permit to do so. The
16 application shall describe the location and purpose of the proposed change or
17 removal of timber and shall be accompanied by the maps and plans and other
18 information the secretary shall direct. A conformed copy shall be
19 simultaneously filed with the town clerk of the town in which the proposed
20 alteration or removal of timber is located, and mailed to each owner of
21 property that abuts or is opposite the land where the alteration or removal of

1 timber is to take place. The town clerk shall forthwith post the copy in the
2 town office.

3 § 1023. INVESTIGATION, PERMIT

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

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

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

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

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

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

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

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20 Sec. 2. EFFECTIVE DATE

21 This act shall take effect on passage.