

Senate Bill 844
Sponsored by Senator BATES
SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Establishes public right to use certain waterways for recreational uses. Specifies extent of right. Limits right to use portions of waterways near hydroelectric power generating facilities. Limits landowner liability. Requires Department of State Lands to work with Oregon State Police to resolve issues related to recreational use of waterways.

Punishes violation of statutes or rules regulating public access to waterways by fine of up to \$360. Requires department to work with affected property owners to exchange quitclaim deeds so that state obtains title to submersible and submerged lands existing at time department makes determination of navigability.

A BILL FOR AN ACT

Relating to waterways; creating new provisions; and amending ORS 105.672 ~~and 274.404~~.
Be It Enacted by the People of the State of Oregon:

Comment [N1]: The references to 274 had already been removed.

SECTION 1. {+ As used in sections 1 to 6 of this 2009 Act:

(1) 'Barrier' means a bridge, fence, dam or any other natural or artificial obstruction located in or over a ~~Class 1~~ floatable waterway that:

- (a) Restricts or interferes with passage on or through the waterway; and
- (b) Effectively obstructs the recreational use of the waterway.

(2) 'Bank' means the portion of a waterway that lies between the line of ordinary high water and the waterline of a waterway.

(3) 'Class 1 waterway' means any segment of a ~~free-flowing~~ floatable, natural waterway, ~~excluding lakes?~~ whether tidal or nontidal that is wholly within this state, and its bed and banks.

Comment [N2]: Too restrictive, eg: lakes. (DSL has declared many lakes navigable.)

(4) 'Class 2 waterway' means any segment of a natural waterway that is not a Class 1 waterway and any artificial waterway.

Comment [N3]: Should refer to segments. Eg Grande Ronde & Klamath are not "wholly within the state but upper segments are. Segments of the Columbia and Snake are in multiple states.

~~(5) 'Ephemeral waterway' means a waterway that~~

- ~~(a) Flows only during and immediately after periods of heavy precipitation;~~
- ~~(b) Receives little or no ground water to sustain its flow; and~~
- ~~(c) Has a bed that is above the water table.~~

Comment [N4]: Class 1 & 2 are irrelevant under the AG's opinion. Consider replacing with a definition of "floatable waterways".

(6) 'Floatable' means having the capacity, in terms of length, width and depth, necessary to enable a boat to make successful progress through a waterway at any time, regardless of the presence of shallow rapids, exposed cobble or other objects that may impede passage.

Comment [N5]: This definition serves no purpose as there is no reference to ephemeral in the bill.

~~(7) 'Line of ordinary high water' means the line on the bank or shore of a waterway to which high water ordinarily rises annually in season.~~

Comment [N6]: Needs rewording for determination at mean high water, preventing an interpretation of determination at low water.

(8) 'Recreational use' means participation in water-dependent activities and incidental uses connected with those activities.

(9) 'Emergency use' means the use of property:

- (a) to obtain immediate and necessary medical attention; or
- (b) necessitated by damage to a boat [or floating device] used by a person making recreational use of a waterway, if the damage is of a nature so as to make continued use of the boat unsafe or impracticable, for purposes of temporarily engaging in boat repair or for direct egress from the waterway to the nearest reasonable public access point

Comment [N7]: This is redundant. See (11) which says the same thing.

(10) 'Portage' means to move a boat overland to avoid a barrier to navigating a waterway.

(11) ~~Recreational~~ Public use' means the participation in any water-dependent activities not otherwise prohibited by law. + }

Comment [N8]: Per the AG's opinion public use includes transportation, recreation, & commerce.

SECTION 2. {+ (1) Except as provided in this section, a person may use a Class 1 waterway for recreational use between the lines of ordinary high water.
 (2) A person may not use a Class 2 waterway for recreational use without the express permission of the riparian landowner.
~~(3) An owner or operator of a hydroelectric power generating facility may restrict the use of a Class 1 waterway in and around the facility and related structures as necessary to protect against injury or loss of life.~~
 (4) A state agency, with management authority over a waterway, working in conjunction with the Department of State Lands, may restrict the use of the waterway or designate public areas where recreational Public use may occur by adoption of rule. + }

Comment [N9]: 2(1) and 2(2) should be eliminated if reference to class 1 & 2 are replaced by "floatable waterways".

Comment [N10]: This is already in law

Comment [N11]: Existing law already allows this.

SECTION 3. {+ (1) A person making recreational use of a Class 4 floatable waterway may travel on property adjacent to the waterway that is above the line of ordinary high water for emergency use or to portage around a barrier if the person takes:
 (a) The most direct and least intrusive path possible;
 (b) Reasonable steps to avoid damaging the property; and
 (c) Reasonable steps to repair any actual damage done to the property. +}
 (2) It is a defense to a charge of criminal trespass under ORS 164.246, 164.255, or 164.265 that a person making recreational use of a Class 1 waterway entered property adjacent to a waterway for emergency use ~~of or~~ to portage and complied with the requirements of this section.
 (3) A person using private property adjacent to a waterway for emergency use or to portage is liable for actual damage caused to the property.

Comment [N12]: Typo correction

SECTION 4. {+ The right to recreational use of a Class 4 floatable waterway and the recreational use of a Class 4 floatable waterway does not:
 (1) Grant any easement or right to enter private property to gain access to the waterway.
 (2) Allow a person to obtain a prescriptive easement to public or private lands.
 (3) Affect the title to or ownership of lands below the line of ordinary high water. + }

SECTION 5. {+ The Department of State Lands shall, to the extent practicable, work with the Oregon State Police and other appropriate local, state and federal agencies to resolve issues related to conflicts between landowners and recreational public users of Class 4 floatable waterways. + }

Comment [N13]: Needs an education component involving DSL, ODFW, & OSP.

~~SECTION 6. {+ The State Land Board, working with State Police, the Department of Parks and Recreation, the State Marine Board, and the Department of Fish and Wildlife, may adopt rules governing the recreational use of Class 1 waterways that are necessary to protect the public health and safety or to protect the interests of adjacent property owners. + }~~

Comment [N14]: This is already covered by existing law.

SECTION 7 {+ A landowner with property adjacent to or within a Class 4 floatable waterway:
 (1) is not liable:
 (a) for damage to natural resources, including habitat, fish, wildlife, and water quality, caused by persons making recreational use of a waterway or using property for emergency use or portage;
 or
 (b) in contract or tort for any personal injury, death, or property damage as provided in ORS 105.682, in connection with the recreational use of a waterway or the use of property for emergency use or portage; and
 (2) must exercise the rights of a landowner with such care so as to not unreasonably interfere with persons making recreational use of a Class 4 floatable waterway.

Comment [N15]: This word is not acceptable without an acceptable definition.

SECTION 8. Nothing in sections 1 to 7 of this 2009 Act and the amendments to ORS [...] affects:
 (1) Any treaty or right of any federally recognized Indian tribe.
 (2) Land held in trust by the federal government for Indian tribes or individual members of Indian tribes.
 (3) The right of a landowner to engage in farming practice, as defined in ORS 30.930, without eliminating passage.

SECTION 9 ORS 105.672 is amended to read:
 105.672. As used in ORS 105.672 to 105.696:
 (1) 'Charge':

- (a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner's land.
- (b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner's land.

~~(2) 'Harvest' has that meaning given in ORS 164.813.~~

~~(3) 'Land' includes all real property, whether publicly or privately owned.~~

(4) 'Owner' means the possessor of any interest in any land, including but not limited to possession of a fee title. 'Owner' includes a tenant, lessee, occupant or other person in possession of the land.

(5) ~~'Recreational purposes: Public use'~~ includes, but is not limited to, { + recreational use pursuant to sections 2 and 3 of this 2009 Act, + } outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

~~(6) 'Special forest products' has that meaning given in ORS 164.813.~~

~~(7) 'Woodcutting' means the cutting or removal of wood from land by an individual who has obtained~~ permission from the owner of the land to cut or remove wood. {+ +}

Comment [N16]: Defines terms not used in this legislation.

Comment [N17]: Per AG's opinion.

Comment [N18]: Defines terms not used in this legislation.

SECTION 10 {+ (1) A person commits a Class B ~~violation~~ misdemeanor if the person violates section 2 or 3 of this 2009 Act or any rules adopted by the State Land Board to implement section 2, 3 or ~~3-7~~ of this 2009 Act.

(2) All fines recovered for violations under this section shall be paid to the clerk of the court who, after deducting court costs, shall be deposited into the Common School Fund for use by the Department of State Lands in the administration of sections 1 to 6 of this 2009 Act. +}