

## SENATE AMENDMENTS TO SENATE BILL 1028

By COMMITTEE ON RULES

June 3

- 1 On page 1 of the printed bill, line 2, delete "105.672,".
- 2 Delete lines 5 through 24 and delete pages 2 through 9 and insert:
- 3 **"SECTION 1. As used in sections 1 to 8 of this 2005 Act:**
- 4 **"(1) 'Bank' means the portion of a waterway that lies between the line of ordinary high**
- 5 **water and the waterline of a waterway.**
- 6 **"(2) 'Barrier' means an obstruction located in a waterway that totally or effectively**
- 7 **blocks the use of the waterway.**
- 8 **"(3) 'Boat' has the meaning given that term in ORS 830.005.**
- 9 **"(4) 'Class 1 waterway' means any segment of a free-flowing, floatable, natural waterway,**
- 10 **whether tidal or nontidal, that is located wholly within this state, and its banks.**
- 11 **"(5) 'Class 2 waterway' means any segment of:**
- 12 **"(a) A natural waterway that is not a Class 1 waterway;**
- 13 **"(b) An ephemeral waterway; or**
- 14 **"(c) The Metolius River.**
- 15 **"(6) 'Emergency use' means a use of property:**
- 16 **"(a) To obtain immediate and necessary medical attention; or**
- 17 **"(b) Necessitated by damage to a boat used by a person making recreational use of a**
- 18 **waterway, if the damage is of a nature so as to make continued use of the boat unsafe or**
- 19 **impracticable, for purposes of temporarily engaging in boat repair or for egress from the**
- 20 **waterway.**
- 21 **"(7) 'Ephemeral waterway' means a waterway that:**
- 22 **"(a) Flows only during and immediately after periods of heavy precipitation;**
- 23 **"(b) Receives little or no ground water to sustain its flow; and**
- 24 **"(c) Has a bed that is above the water table.**
- 25 **"(8) 'Floatable' means having the capacity, in terms of length, width and depth, necessary**
- 26 **to enable a boat to make successful progress through a waterway at any time, regardless**
- 27 **of the presence of shallow rapids, exposed cobble or other objects that may impede passage.**
- 28 **"(9) 'Line of ordinary high water' means the line on the bank of a waterway to which high**
- 29 **water ordinarily rises.**
- 30 **"(10) 'Portage' means to move a boat overland to avoid a barrier to navigating a**
- 31 **waterway.**
- 32 **"(11) 'Recreational use' means participation in water-dependent activities and incidental**
- 33 **uses connected with those activities.**
- 34 **"SECTION 2. (1) The State Land Board by rule shall adopt and administer a statewide**
- 35 **management plan to govern the recreational use of Class 1 waterways under sections 1 to 8**

1 of this 2005 Act. The statewide management plan shall include:

2 “(a) Provisions specifying the time, manner, type and extent of the recreational uses al-  
3 lowed on Class 1 waterways located throughout the state; and

4 “(b) A method for modifying the time, manner, type and extent of recreational uses al-  
5 lowed on a particular Class 1 waterway.

6 “(2) The board shall, from time to time, review the statewide management plan for pos-  
7 sible modification.

8 “(3) Notwithstanding subsection (1) of this section, the board may enter into contracts  
9 or agreements with an entity of the executive department, as defined in ORS 174.112, to de-  
10 velop and administer the statewide management plan. The contracts or agreements may in-  
11 clude provisions for the payment of expenses incurred in developing and administering the  
12 statewide management plan out of the Waterway Management Account established pursuant  
13 to section 8 of this 2005 Act.

14 “**SECTION 3.** (1) The State Land Board shall appoint a Class 1 Waterways Advisory  
15 Committee to advise and aid the State Land Board in carrying out the provisions of sections  
16 1 to 8 of this 2005 Act.

17 “(2) The advisory committee shall be composed of eight members appointed by the State  
18 Land Board from the following interests:

19 “(a) Two members who represent riparian landowners.

20 “(b) Two members who represent recreational interest groups.

21 “(c) One member who represents federally recognized Indian tribes.

22 “(d) One member who represents law enforcement.

23 “(e) One member who represents the State Parks and Recreation Department.

24 “(f) One member who represents the State Marine Board.

25 “(3) The State Land Board may determine the terms of the members of the advisory  
26 committee.

27 “(4) The State Land Board shall consult with the advisory committee, from time to time,  
28 with respect to matters relating to the recreational use of Class 1 waterways, including  
29 conflicts between landowners and recreational users and proposed modifications to the rec-  
30 reational uses allowed under the statewide management plan.

31 “(5) The advisory committee shall hear issues related to conflicts between landowners  
32 and recreational users of Class 1 waterways. The advisory committee may develop a process  
33 for accepting information related to claims of conflicts and for making recommendations to  
34 the State Land Board for amendments to the statewide management plan to reduce conflicts.

35 “(6) Members of the advisory committee are not entitled to compensation, but at the  
36 discretion of the State Land Board may be reimbursed from funds available to the board for  
37 actual and necessary travel and other expenses incurred in the performance of their official  
38 duties in the manner and amount provided in ORS 292.495.

39 “**SECTION 4.** (1) Except as provided in this section, a person may make recreational use  
40 of any waterway.

41 “(2) A person making recreational use of a Class 1 waterway must exercise reasonable  
42 and prudent care and must not unreasonably interfere with the rights of riparian landown-  
43 ers.

44 “(3) A person may not use a Class 2 waterway for a recreational use unless the person  
45 obtains the express permission of the riparian landowner. However, a person using a Class

1 2 waterway that is located on public lands may act as if the person has express permission  
2 of the riparian landowner if the person complies with all applicable laws, rules and policies  
3 established by any public body, as defined in ORS 174.109, or federal agency with management  
4 authority over the Class 2 waterway.

5 “(4) An owner or operator of a hydroelectric power generating facility may restrict the  
6 use of a waterway in and around the facility and related structures in a manner that the  
7 owner or operator determines necessary to protect against injury or loss of life.

8 “(5) Recreational use of a Class 1 waterway may be conditioned, limited, restricted or  
9 excluded by:

10 “(a) A statewide management plan adopted by the State Land Board pursuant to section  
11 2 of this 2005 Act;

12 “(b) State law or rules of a state agency with authority to adopt rules governing the use  
13 of state-owned waterways; or

14 “(c) Federal law or rules of a federal agency with management authority over the  
15 waterway.

16 “(6) Unless allowed pursuant to the statewide management plan adopted pursuant to  
17 section 2 of this 2005 Act, or unless the Class 1 waterway has been deemed navigable by the  
18 State Land Board, by an order of a court of competent jurisdiction or by the Legislative  
19 Assembly, a person may not, without obtaining the express permission of the riparian land-  
20 owner, use a Class 1 waterway for the following purposes:

21 “(a) Building open fires;

22 “(b) Disposing of human waste;

23 “(c) Overnight camping;

24 “(d) Hunting or discharging weapons, except for the purpose of hunting waterfowl when  
25 specifically authorized by the State Department of Fish and Wildlife; or

26 “(e) Placing or creating any permanent or seasonal structure, including a duck blind or  
27 boat moorage.

28 “(7) A person may not use a boat in conjunction with recreational use of a waterway  
29 unless:

30 “(a) The person is using a segment of a Class 1 waterway for which the payment of a fee  
31 is required by another governmental entity, including the federal government, to use the  
32 waterway and the person has paid that fee;

33 “(b) The boat has a valid certificate of number, as evidenced by the display of an identi-  
34 fying number on the boat with current validation stickers issued under ORS 830.795;

35 “(c) The boat has a valid nonmotorized boat certificate of number for the boat, as evi-  
36 denced by the display of an identifying number on the boat along with a current validation  
37 sticker or tag issued under section 11 of this 2005 Act; or

38 “(d) A person using the boat holds a valid, effective transferable nonmotorized boat per-  
39 mit issued pursuant to section 9 of this 2005 Act.

40 “SECTION 5. (1) A person making recreational use of a waterway pursuant to section 4  
41 of this 2005 Act may travel on upland property adjacent to the waterway for emergency use  
42 or to portage if the person takes:

43 “(a) The most reasonably direct and least intrusive path;

44 “(b) Reasonable steps to avoid damaging the property; and

45 “(c) Reasonable steps to repair any damage the person may have caused to the property.

1           “(2) It is a defense to a charge of criminal trespass under ORS 164.245, 164.255 or 164.265  
2 that a person making recreational use of a Class 1 waterway entered property adjacent to a  
3 waterway for emergency use or to portage and complied with the requirements of this sec-  
4 tion.

5           “(3) A person using private property adjacent to a waterway for emergency use or to  
6 portage is liable for actual damage caused to the property.

7           “SECTION 6. (1) For purposes of this section, ‘prescriptive easement’ means the right  
8 of a person to use the property of another person that is acquired by open, exclusive, noto-  
9 rious, hostile, adverse, continuous and uninterrupted use of the property for at least five  
10 years.

11           “(2) A person may not acquire a prescriptive easement to public or private land:

12           “(a) Through the recreational use of a waterway, including the land lying below the line  
13 of ordinary high water and portage routes; or

14           “(b) By entering the property of a landowner to access a waterway.

15           “(3) The ability to make recreational use of a waterway pursuant to section 4 of this 2005  
16 Act does not grant any easement or right to enter the property of a landowner in order to  
17 make recreational use of the waterway unless:

18           “(a) The easement or right existed prior to the effective date of this 2005 Act; or

19           “(b) The reason for the entry onto the property is for emergency use or to portage.

20           “SECTION 7. A landowner with property adjacent to a Class 1 waterway:

21           “(1) Is not liable:

22           “(a) For damage to natural resources, including habitat, fish, wildlife and water quality,  
23 caused by persons making recreational use of a waterway or using property for emergency  
24 use or to portage; or

25           “(b) In contract or tort for any personal injury, death or property damage as provided  
26 in ORS 105.682; and

27           “(2) Must exercise the rights of a landowner with such care so as to not unreasonably  
28 interfere with persons making recreational use of a Class 1 waterway.

29           “SECTION 8. (1) The Waterway Management Account is established separate and distinct  
30 from the General Fund. Interest earned on moneys in the account shall be credited to the  
31 account.

32           “(2) The account shall consist of moneys transferred to the account by the State Marine  
33 Board under ORS 830.140 from fees collected pursuant to sections 9 and 11 of this 2005 Act  
34 and fines imposed under section 16 of this 2005 Act.

35           “(3) The moneys in the account are continuously appropriated to the State Land Board  
36 for the following purposes:

37           “(a) Payment to the State Marine Board for operation of the recreational use of the Class  
38 1 waterways and Class 2 waterways program established pursuant to section 9 of this 2005  
39 Act;

40           “(b) Providing law enforcement services related to Class 1 waterways;

41           “(c) Developing and administering the statewide management plan adopted pursuant to  
42 section 2 of this 2005 Act; and

43           “(d) Any other purpose that the State Land Board determines is appropriate for the  
44 maintenance, enhancement or protection of the natural and scenic resources of Class 1  
45 waterways.

1       **“SECTION 9. (1) The State Marine Board shall, consistent with the statewide manage-**  
2 **ment plan adopted pursuant to section 2 of this 2005 Act, establish a program for the regu-**  
3 **lation of the recreational use of the Class 1 waterways and Class 2 waterways of the state.**

4       **“(2) As part of the program established under this section, the board may:**

5       **“(a) Develop and disseminate information and educational materials regarding the rec-**  
6 **reational use of specific Class 1 waterways and portage routes, public boat launches and**  
7 **recreational facilities located on or near the waterways;**

8       **“(b) Develop and maintain recreational facilities on or near Class 1 waterways;**

9       **“(c) Provide grants for the acquisition of an interest in land for the purpose of developing**  
10 **recreational facilities on or near Class 1 waterways; and**

11       **“(d) Specify the method of display of a transferable nonmotorized boat permit.**

12       **“(3) The board shall establish a process for the application for and the issuance of**  
13 **transferable nonmotorized boat permits. A transferable nonmotorized boat permit issued**  
14 **pursuant to this section authorizes the holder of the permit to use a boat in conjunction with**  
15 **the recreational use of a Class 1 waterway. The board shall provide that a transferable non-**  
16 **motorized boat permit:**

17       **“(a) Is freely transferable between different persons and different boats, but may be used**  
18 **to authorize the use of only one boat at any given time;**

19       **“(b) May be issued by designated agents of the board; and**

20       **“(c) Has an annual fee in the amount of \$20.**

21       **“(4) Fees collected by the board or by its designated agents for transferable nonmotorized**  
22 **boat permits shall be paid into the Boating Safety, Law Enforcement and Facility Account,**  
23 **except that the board may authorize a designated agent other than a board employee to**  
24 **charge a service fee of \$2.50, in addition to the annual transferable nonmotorized boat permit**  
25 **fee, for the issuance service performed by the agent.**

26       **“(5) The State Marine Board, in consultation with the State Land Board, shall determine**  
27 **the amount of moneys required for law enforcement services related to the recreational use**  
28 **of Class 1 waterways in each county and request that the State Land Board transfer the**  
29 **amount from the Waterway Management Account to the State Marine Board for distribution**  
30 **under contracts entered into with the Department of State Police or a county sheriff. A**  
31 **contract with a county sheriff shall be entered into only with the approval of the governing**  
32 **body of the county. The State Marine Board shall determine the intervals at which the**  
33 **moneys shall be distributed under the contracts.**

34       **“(6) As used in this section, ‘Class 1 waterway,’ ‘Class 2 waterway’ and ‘recreational**  
35 **use’ have the meanings given those terms in section 1 of this 2005 Act.**

36       **“SECTION 10. Section 11 of this 2005 Act is added to and made a part of ORS 830.700 to**  
37 **830.870.**

38       **“SECTION 11. (1) The owner of a boat that is not a sailboat of 12 feet or more in length**  
39 **or a motorboat may register the boat with the State Marine Board and obtain a nonmotor-**  
40 **ized boat certificate of number and identifying number without securing a certificate of title.**

41       **“(2) Upon the owner’s submission of an application in a form approved by the board, the**  
42 **board shall issue to the owner a nonmotorized boat certificate of number and identifying**  
43 **number. The certificate shall state the identifying number awarded to the boat, the name**  
44 **and address of the owner, a description of the boat, the issue date of the certificate and the**  
45 **expiration date of the certificate.**

1       “(3) Along with the nonmotorized boat certificate of number, the board shall issue a  
2 validation sticker or tag. The owner shall affix the sticker or tag to the boat so that the  
3 sticker or tag is visible for inspection. The identifying number shall be placed on the boat in  
4 the manner provided in ORS 830.780.

5       “(4) The biennial fee for a nonmotorized boat certificate of number is \$2 per foot or  
6 portion of a foot.

7       “(5) A nonmotorized boat certificate of number expires on December 31 of the year indi-  
8 cated on the certificate.

9       “**SECTION 12.** ORS 390.131 is amended to read:

10       “390.131. (1) The State Parks and Recreation Director is the executive head of the State Parks  
11 and Recreation Department and shall:

12       “[(1)] (a) Be responsible to the State Parks and Recreation Commission for administration and  
13 enforcement of the duties, functions and powers imposed by law upon the commission and the de-  
14 partment.

15       “[(2)] (b) Appoint, supervise and control all commission employees and, under policy direction  
16 of the commission, be responsible for all of the commission’s functions and activities.

17       “[(3)] (c) Establish such administrative divisions as are necessary to carry out properly the  
18 commission’s functions and activities.

19       “[(4)] (d) Contract with the Department of Transportation for the performance of such adminis-  
20 trative services as the director considers appropriate.

21       “(2) The director may enter into contracts or agreements with the State Land Board to  
22 develop and administer the statewide management plan described in section 2 of this 2005  
23 Act.

24       “**SECTION 13.** ORS 830.110 is amended to read:

25       “830.110. In addition to the powers and duties otherwise provided in this chapter, the State  
26 Marine Board shall have the power and duty to:

27       “(1) Make all rules necessary to carry out the provisions of this chapter. The rules shall be  
28 made in accordance with ORS chapter 183.

29       “(2) Devise a system of identifying numbers for boats, floating homes and boathouses. If an  
30 agency of the federal government has an overall system of identification numbering for boats within  
31 the United States, the system devised by the board shall conform with the federal system.

32       “(3) Cooperate with state and federal agencies to promote uniformity of the laws relating to  
33 boating and their enforcement.

34       “(4) Make contracts **and agreements** necessary to carry out the provisions of ORS [830.060 to  
35 830.145, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830  
36 to 830.870] **chapter 830 or to develop and administer the statewide management plan described**  
37 **in section 2 of this 2005 Act.**

38       “(5) Advise and assist county sheriffs and other peace officers in the enforcement of laws re-  
39 lating to boating.

40       “(6) Study, plan and recommend the development of boating facilities throughout the state which  
41 will promote the safety and pleasure of the public through boating.

42       “(7) Publicize the advantage of safe boating.

43       “(8) Accept gifts and grants of property and money to be used to further the purposes of this  
44 chapter.

45       “(9) Exempt from any provisions of this chapter any class of boats if it determines that the

1 safety of persons and property will not be materially promoted by the applicability of those provisions to the class of boats, but the board shall not exempt from numbering any class of boats unless it determines that the numbering will not materially aid in their identification and unless the secretary of the department of the federal government under which the United States Coast Guard is operating has exempted from numbering the same boats or classes of boats.

6 “(10) Appoint and require the bonding of agents to issue a temporary permit to operate a boat. The agents may charge, in addition to the prescribed fees, \$1 per transaction for their services in issuing the temporary permit.

9 “(11) Publish and distribute to the interested public the boating laws of this state and resumes or explanations of those laws.

11 “(12) Publish and distribute forms for any application required under this chapter and require the use of such forms.

13 “(13) Make rules for the uniform navigational marking of the waters of this state. Such rules shall not conflict with markings prescribed by the United States Coast Guard. No political subdivision or person shall mark the waters of this state in any manner in conflict with the markings prescribed by the board.

17 “(14) Make rules regarding marine toilets and their use consistent with the prevention and control of pollution of the waters of this state and not in conflict with the rules of the Department of Human Services or the Environmental Quality Commission.

20 “(15) Institute proceedings to enjoin unlawful obstructions injuring free navigation on the waters of this state.

22 “(16) Make rules regulating water ski course markers, ski jumps and other special use devices placed in the waters of this state. Such rules may regulate the installation and use of the devices and may require a permit.

25 “(17) Adopt rules necessary to carry out and enforce the provisions of ORS 830.950 and 830.955. The rules shall include but need not be limited to:

27 “(a) The kinds of protective covering or physical barriers that are acceptable to be used between a submersible polystyrene device and the water.

29 “(b) Guidelines for the use of submersible polystyrene devices for the repair or maintenance of existing docks or floats.

31 “(18) Adopt rules providing for establishment of a Safe Boating Education Course to be made available to courts and law enforcement agencies within this state for use as a sentencing option for those individuals convicted of boating offenses. The board shall specify the content of the Safe Boating Education Course and shall prescribe procedures for making the course available to local courts and law enforcement agencies, including procedures for promptly notifying such courts whether individuals required to enroll in the course have taken and successfully passed the course. Such rules may provide for administration of the course through nonprofit organizations, such as the United States Coast Guard Auxiliary, United States Power Squadrons or similar groups.

39 “(19) For purposes of ORS 830.175, 830.180, 830.185 and 830.195, in cooperation with the State Aviation Board, regulate boats that are seaplanes as provided in ORS 830.605 and 835.200.

41 “**SECTION 14.** ORS 830.140 is amended to read:

42 “830.140. (1) On or before the 10th day of each month, the State Marine Board shall pay into the State Treasury[, *except as provided in ORS 830.926,*] all moneys received by the board during the preceding calendar month. The State Treasurer shall credit the moneys to the Boating Safety, Law Enforcement and Facility Account, which account hereby is created, separate and distinct from the

1 General Fund. The moneys in the account hereby are continuously appropriated to the board for the  
2 purpose of paying the expense of administering and enforcing the provisions of this chapter. The  
3 board shall keep a record of all moneys received and expended.

4 “(2) The board shall determine the amount of moneys deposited in the account that is  
5 from fees collected pursuant to ORS 830.790 and 830.850 and deposit that amount into the  
6 Abandoned Boat Removal and Cleanup Subaccount.

7 “(3) The board shall determine the amount of moneys deposited in the account that is  
8 from fees collected for nonmotorized boat certificates of number pursuant to section 11 of  
9 this 2005 Act and for transferable nonmotorized boat permits pursuant to section 9 of this  
10 2005 Act and deposit that amount into the Waterway Management Account established pur-  
11 suant to section 8 of this 2005 Act.

12 “[2] (4) After depositing the amounts described in subsections (2) and (3) of this section  
13 and after paying the necessary expenses incurred by the board in administering this chapter, the  
14 funds available in the account shall be distributed, in the amounts required, for the purpose of en-  
15 forcing the provisions of this chapter and the regulations adopted pursuant thereto. The board shall  
16 determine the amount required for enforcement in each county, considering the survey conducted  
17 under ORS 830.115. The funds available shall be apportioned according to the amounts required and  
18 distributed, for enforcement in each county where there is a need, under a contract entered into  
19 with a city, with the Department of State Police or with the sheriff of the county. A contract with  
20 a city or a sheriff shall be entered into only with the approval of the governing body of the city or  
21 county. The board shall determine the intervals at which the moneys shall be distributed.

22 “[3] (5) The governing body of any county having within its boundaries a city providing rec-  
23 reational boating facilities including launching ramps, may contract with the city for the purpose  
24 of enforcing the provisions of this chapter and the rules and regulations made pursuant thereto.

25 “[4] (6) If the city enters into a contract with the board or with a county, the county is re-  
26 lieved of its enforcement responsibilities within the city as agreed to by the county and the city or  
27 by the board and the city.

28 “**SECTION 15.** ORS 830.150 is amended to read:

29 “830.150. (1) Amounts remaining in the Boating Safety, Law Enforcement and Facility Account  
30 in excess of funds obligated under ORS 830.140 [(2)] shall be distributed, upon application, to the  
31 state, a city, county, water improvement district, park and recreation district or a port. Distribution  
32 shall be made on the basis of need for a facility as that need appears to the State Marine Board.

33 “(2)(a) In distributing funds under subsection (1) of this section, the board shall give first prior-  
34 ity to applications for facilities designed to control water pollution or otherwise enhance water  
35 quality, including but not limited to pumping stations for recreational boat holding tanks, and to  
36 those other facilities for which there appears the greatest public need.

37 “(b) Subject to paragraph (a) of this subsection, the board may distribute funds for:

38 “(A) Construction and maintenance of boating facilities, for the acquisition of property therefor,  
39 and other related facilities such as parking, potable water, sanitation and other facilities for the  
40 convenience of the public using the boating facilities; and

41 “(B) Removal of derelict structures floating upon and abandoned dock or boat mooring facilities  
42 situated in, upon or over the waters of this state if such structures or facilities constitute a hazard  
43 to boating upon such waters.

44 “(3) Prior to making any distribution of funds under this section, the board shall hold a public  
45 hearing in the area where a facility is to be constructed or land acquired if in the judgment of the

1 board, use of the facility would stimulate significant change in the character of the recreational use  
2 of the waters.

3 “(4) The board shall make no distribution of funds under this section for construction or acqui-  
4 sition if in the judgment of the board the applicant has not included in the construction or acquisi-  
5 tion plans adequate provision for protecting the quality of the waters affected by the plans. The  
6 board’s denial of any application under this subsection must include specific notice to the applicant  
7 of the point or points of the plan that are found by the board to be inadequate.

8 **“SECTION 16. (1) A person who violates section 4 of this 2005 Act or any provision of the**  
9 **statewide management plan adopted pursuant to section 2 of this 2005 Act commits a Class**  
10 **B violation.**

11 **“(2) Fines imposed as a result of conviction of a violation of section 4 of this 2005 Act**  
12 **or of any provision of the statewide management plan adopted pursuant to section 2 of this**  
13 **2005 Act shall be deposited into the State Treasury for credit to the Waterway Management**  
14 **Account established pursuant to section 8 of this 2005 Act.**

15 **“SECTION 17. Nothing in section 4, 5 or 6 of this 2005 Act affects the title to or owner-**  
16 **ship of:**

17 **“(1) The surface water contained within a waterway;**

18 **“(2) The land lying below the line of ordinary high water of a waterway; or**

19 **“(3) The established portage routes within the state.**

20 **“SECTION 18. Nothing in sections 1 to 11 of this 2005 Act and the amendments to ORS**  
21 **390.131, 830.110, 830.140 and 830.150 by sections 12 to 15 of this 2005 Act affects:**

22 **“(1) The right of a landowner to engage in a farming practice, as defined in ORS 30.930.**

23 **“(2) Any treaty or right of any federally recognized Indian tribe.**

24 **“(3) Land held in trust by the federal government for Indian tribes or individual members**  
25 **of Indian tribes.**

26 **“(4) The recreational use of the surface waters of lakes, canals, ditches, ponds and other**  
27 **confined water bodies.**

28 **“(5) The rights or responsibilities established under a management plan for a Class 1**  
29 **waterway adopted pursuant to the federal Wild and Scenic Rivers Act (P.L. 90-542).**

30 **“SECTION 19. (1) Sections 4, 5, 6, 9 and 11 of this 2005 Act become operative January 1,**  
31 **2006.**

32 **“(2) Notwithstanding subsection (1) of this section, the State Land Board and the State**  
33 **Marine Board may take any administrative action necessary prior to January 1, 2006, in or-**  
34 **der to carry out the purposes of this 2005 Act.**

35 **“SECTION 20. This 2005 Act being necessary for the immediate preservation of the public**  
36 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
37 **on its passage.”.**