

Senate Bill 1060

Sponsored by Senator BATES (Pre-session filed.)

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 recreational use of certain waterways. Specifies extent and limitations of right. Limits liability of owners of property immediately adjacent to waterways.

Requires Department of State Lands to work with Department of State Police and other agencies to resolve issues related to recreational use of waterways.

Punishes violation of statute or rule regulating public access to waterways by fine of up to \$360.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to waterways; creating new provisions; amending ORS 105.672; and declaring an emergency.

2 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 8 of this 2010 Act:

4 (1) **"Bank" means the portion of a waterway that lies between the line of ordinary low**
5 **water and the line of ordinary high water of the waterway.**

6 (2) **"Barrier" means a bridge, fence, dam or any other natural or artificial obstruction**
7 **located in or over a Class 1 waterway that:**

8 (a) **Restricts or interferes with passage on or through the waterway; and**

9 (b) **Effectively obstructs the recreational use of the waterway.**

10 (3) **"Class 1 waterway" means any segment of a natural waterway that is floatable or**
11 **tidally influenced.**

12 (4) **"Class 2 waterway" means any segment of a natural waterway that is not a Class 1**
13 **waterway.**

14 (5) **"Emergency use," with respect to property, means the use of property:**

15 (a) **To obtain immediate and necessary medical attention; or**

16 (b) **Necessitated by damage to a boat or inflatable device used by a person making rec-**
17 **reational use of a waterway, if the damage makes continued use of the boat or inflatable**
18 **device unsafe or impracticable, for purposes of temporarily engaging in repair of the boat**
19 **or inflatable device or for direct egress from the waterway to the nearest reasonable public**
20 **access point.**

21 (6) **"Floatable" means having the capacity, in terms of length, width and depth, to enable**
22 **a boat or other vessel to make successful progress through a waterway at any time, re-**
23 **gardless of the presence of shallow rapids, exposed cobble or other objects that may impede**
24 **passage.**

25 (7) **"Line of ordinary high water" means the line on the bank or shore to which the high**
26 **water ordinarily rises annually in season.**

27 (8) **"Line of ordinary low water" means the line on the bank or shore to which the low**
28 **water ordinarily recedes annually in season.**
29

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (9) "Portage" means to move a boat or inflatable device overland to avoid a barrier to
 2 navigating a waterway.

3 (10) "Recreational use" means participation in water-dependent activities and incidental
 4 uses connected with those activities.

5 **SECTION 2.** (1) Except as provided in this section, a person may use a Class 1 waterway
 6 for recreational use between the lines of ordinary high water.

7 (2) A person may not use a Class 2 waterway for recreational use without the express
 8 permission of the person who owns the property immediately adjacent to the waterway, un-
 9 less the property is under public ownership.

10 (3) An owner or operator of a hydroelectric power generating facility may restrict the
 11 use of a Class 1 waterway in and around the facility and related structures as necessary to
 12 protect against injury or loss of life.

13 (4) A state agency with management authority over a waterway, after consultation with
 14 the Department of State Lands, by rule may impose restrictions on the use of the waterway,
 15 including but not limited to restrictions related to the need to protect the habitat of sensitive
 16 species as classified by rule adopted by the State Fish and Wildlife Commission, or may
 17 designate public areas where recreational use may occur.

18 **SECTION 3.** (1) A person making recreational use of a Class 1 waterway may travel on
 19 private property adjacent to the waterway that is above the line of ordinary high water for
 20 emergency use or portage if the person takes:

- 21 (a) The most direct and least intrusive path possible;
- 22 (b) Reasonable steps to avoid damaging the property; and
- 23 (c) Reasonable steps to repair any actual damage done to the property.

24 (2) It is a defense to a charge of criminal trespass under ORS 164.245, 164.255 and 164.265
 25 if a person making recreational use of a Class 1 waterway entered property adjacent to the
 26 waterway for emergency use, portage or to continue recreational use of the waterway and
 27 complied with the requirements of subsection (1) of this section.

28 (3) A person using private property adjacent to a waterway for emergency use, portage
 29 or to continue recreational use of the waterway is liable for actual damage caused to the
 30 property.

31 **SECTION 4.** The right to recreational use of a Class 1 waterway and the recreational use
 32 of a Class 1 waterway does not:

- 33 (1) Grant any easement or right to enter private property to gain access to the waterway.
- 34 (2) Allow a person to obtain a prescriptive easement to public or private lands.
- 35 (3) Affect the title to or ownership of lands below the line of ordinary high water.

36 **SECTION 5.** The Department of State Lands shall, to the extent practicable, work with
 37 the Department of State Police and other appropriate local, state and federal agencies to
 38 resolve issues related to conflicts between owners of property immediately adjacent to
 39 waterways and persons who make recreational use of Class 1 waterways.

40 **SECTION 6.** The State Land Board, after consultation with the Department of State Po-
 41 lice, the State Parks and Recreation Department, the State Marine Board and the State
 42 Department of Fish and Wildlife, may adopt rules governing the recreational use of Class 1
 43 waterways that are necessary to protect the public health and safety or to protect the in-
 44 terests of owners of property immediately adjacent to the waterways.

45 **SECTION 7.** A landowner with property adjacent to or within a Class 1 waterway:

1 (1) **Is not liable for damage to natural resources, including but not limited to habitat,**
 2 **fish, wildlife and water, caused by persons making recreational use of the waterway or by**
 3 **persons using the landowner’s property for emergency use or portage.**

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

6 **SECTION 8. Sections 1 to 8 of this 2010 Act and the amendments to ORS 105.672 by sec-**
 7 **tion 9 of this 2010 Act do not apply to:**

8 (1) **Any treaty or right of any federally recognized Indian tribe.**

9 (2) **Land held in trust by the federal government for Indian tribes or individual members**
 10 **of Indian tribes.**

11 (3) **The rights of a person who owns the property immediately adjacent to a waterway to**
 12 **engage in farming practice, as defined in ORS 30.930, except that the person may not erect**
 13 **a barrier.**

14 **SECTION 9. ORS 105.672 is amended to read:**

15 105.672. As used in ORS 105.672 to 105.696:

16 (1) “Charge”:

17 (a) Means the admission price or fee requested or expected by an owner in return for granting
 18 permission for a person to enter or go upon the owner’s land.

19 (b) Does not mean any amount received from a public body in return for granting permission for
 20 the public to enter or go upon the owner’s land.

21 (2) “Harvest” has that meaning given in ORS 164.813.

22 (3) “Land” includes all real property, whether publicly or privately owned.

23 (4) “Owner” means the possessor of any interest in any land, such as the holder of a fee title,
 24 a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person
 25 in possession of the land.

26 (5) “Recreational purposes” includes, but is not limited to, **recreational use pursuant to**
 27 **sections 2 and 3 of this 2010 Act**, outdoor activities such as hunting, fishing, swimming, boating,
 28 camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports,
 29 viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any
 30 public purpose project.

31 (6) “Special forest products” has that meaning given in ORS 164.813.

32 (7) “Woodcutting” means the cutting or removal of wood from land by an individual who has
 33 obtained permission from the owner of the land to cut or remove wood.

34 **SECTION 10. (1) A person commits a Class B violation if the person violates section 2**
 35 **or 3 of this 2010 Act, any rule adopted by the State Land Board pursuant to section 6 of this**
 36 **2010 Act or any rule adopted by a state agency pursuant to section 2 (4) of this 2010 Act.**

37 (2) **All fines recovered for violations under this section shall be paid to the clerk of the**
 38 **court who, after deducting court costs, shall transfer the remainder to the Department of**
 39 **State Lands for deposit into the Common School Fund for use by the department in the ad-**
 40 **ministration of sections 1 to 8 of this 2010 Act.**

41 **SECTION 11. This 2010 Act being necessary for the immediate preservation of the public**
 42 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
 43 **on its passage.**