

# 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:**

**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 waterway that:**

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

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

(2) **"Class 1 waterway" means any segment of a natural waterway that is:**

(a) **Not under public ownership;**

(b) **Floatable; and**

(c) **Not an ephemeral waterway.**

(3) **"Class 2 waterway" means any segment of a natural waterway that is not a Class 1 waterway and any artificial waterway.**

(4) **"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.**

(5) **"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.**

(6) **"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.**

(7) **"Recreational use" means participation in water-dependent activities and incidental uses connected with those activities.**

**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.**

**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       **(2) A person may not use a Class 2 waterway for recreational use without the express**  
 2 **permission of the riparian landowner.**

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

6       **(4) A state agency with management authority over a waterway may restrict the use of**  
 7 **the waterway or designate public areas where recreational use may occur.**

8       **SECTION 3. A person making recreational use of a Class 1 waterway may travel on**  
 9 **property adjacent to the waterway that is above the line of ordinary high water for emer-**  
 10 **gency use or to portage around a barrier if the person takes:**

- 11       **(1) The most direct and least intrusive path possible;**
- 12       **(2) Reasonable steps to avoid damaging the property; and**
- 13       **(3) Reasonable steps to repair any actual damage done to the property.**

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

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

19       **SECTION 5. The Department of State Lands shall, to the extent practicable, work with**  
 20 **the Oregon State Police and other appropriate local, state and federal agencies to resolve**  
 21 **issues related to conflicts between landowners and recreational users of Class 1 waterways**  
 22 **in areas that have a high amount of recreational use.**

23       **SECTION 6. The State Land Board may adopt rules governing the recreational use of**  
 24 **Class 1 waterways that are necessary to protect the public health and safety or to protect**  
 25 **the interests of property owners.**

26       **SECTION 7. ORS 105.672 is amended to read:**

27       105.672. As used in ORS 105.672 to 105.696:

28       (1) "Charge":

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

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

33       (2) "Harvest" has that meaning given in ORS 164.813.

34       (3) "Land" includes all real property, whether publicly or privately owned.

35       (4) "Owner" means the possessor of any interest in any land, including but not limited to pos-  
 36 session of a fee title. "Owner" includes a tenant, lessee, occupant or other person in possession of  
 37 the land.

38       (5) "Recreational purposes" includes, but is not limited to, **recreational use pursuant to**  
 39 **sections 2 and 3 of this 2009 Act**, outdoor activities such as hunting, fishing, swimming, boating,  
 40 camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports,  
 41 viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any  
 42 public purpose project.

43       (6) "Special forest products" has that meaning given in ORS 164.813.

44       (7) "Woodcutting" means the cutting or removal of wood from land by an individual who has  
 45 obtained permission from the owner of the land to cut or remove wood.

1       **SECTION 8. (1) A person commits a Class B violation if the person violates section 2 or**  
2 **3 of this 2009 Act or any rules adopted by the State Land Board to implement section 2 or**  
3 **3 of this 2009 Act.**

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

8       **SECTION 9.** ORS 274.404 is amended to read:

9       274.404. (1) On or before July 1, 1996, the State Land Board shall adopt by rule a procedure that  
10 is consistent with ORS 274.400 to 274.412 by which the board and the Department of State Lands  
11 shall make a final administrative determination as to whether a waterway or part of a waterway is  
12 navigable, and if so, the extent of the interest claimed by the State of Oregon in the navigable  
13 portion of the waterway.

14       (2) The rules adopted under subsection (1) of this section shall incorporate the following proce-  
15 dures that the board and the department shall follow:

16       (a) The board may direct the department to make a determination of navigability if there is  
17 sufficient economic justification or if there is a broad and substantial public interest. If the board  
18 so directs, the department shall conduct a study to make the determination.

19       (b) The department shall provide prompt public notice to affected property owners that the de-  
20 partment is beginning the study.

21       (c) Upon completion of a study directed under paragraph (a) of this subsection, the department  
22 shall prepare and submit to the board a draft report setting forth the department's findings and  
23 conclusions as to whether the waterway or part of the waterway under study is navigable and, if  
24 so, the extent of the State of Oregon's interest in the waterway or part of the waterway.

25       (d) The department shall provide appropriate prior public notice to affected property owners and  
26 other interested parties concerning the draft report. The notice shall provide an opportunity for a  
27 public hearing in the area of the affected waterway and an opportunity for the public to submit  
28 written comments on the draft report and to submit testimony or other evidence concerning the  
29 navigability of the affected waterway or part of the waterway or the State of Oregon's interest in  
30 the waterway or part of the waterway.

31       (e) Following the public hearing, the board may adopt the draft report submitted by the de-  
32 partment if substantial evidence in the record supports the report's findings and conclusions, or the  
33 board may refer the report to the department for further action as determined by the board.

34       **(f) The board shall work with affected property owners to exchange quitclaim deeds so**  
35 **that the State of Oregon obtains title to the submersible and submerged lands existing at the**  
36 **time the department makes its determination of navigability under this section.**

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