

HB 2835 -1, -3 STAFF MEASURE SUMMARY

House Committee On Natural Resources

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/19, 4/4

WHAT THE MEASURE DOES:

Defines boat, ephemeral streams, floatable, landowner, line of ordinary high water, public lands, public use waterway, recreational use, surface water, and waterway. States that all water within Oregon from all sources of water supply belong to the public. Supports public right to full use and enjoyment of all waters of Oregon, including bed and banks. Declares policy of Oregon to preserve and enhance public access sites and public access facilities for public use waterways. Authorizes individual to make recreational use of public use waterway up to the ordinary high water without permission of the landowner of the land underlying or riparian to the waterway. Clarifies that an individual must access the exposed shore area of a public waterway by way of water or public access site, or with the landowner's permission. Establishes that owner or operator of dam or water diversion structures may restrict access as required to protect public safety. Allows individual to portage around barriers on a waterway, in least intrusive and most direct way possible, avoiding damage to private property. Allows an individual to gain access to public use waterways for recreation by use of: public bridge or county roads and state highways. Requires that individual accessing public waterway by bridge or road stay within right of way. Clarifies that access to public waterways by bridge, road, or highway does not create or extinguish any right established by prescriptive use prior to date of this Act.

Requires Oregon Department of State Lands (DSL), in cooperation with Oregon Parks and Recreation Department (OPRD), and Oregon State Marine Board (OSMB), coordinate with local government to provide increased public access to public use waterways. Allows DSL to ensure public use waterway access sites are posted; maintain parking and trash disposal facilities at access sites; and maintain sites that provide reasonable access to public for recreational use of public waterways. Requires public lands be open to access for recreational use of public use waterways except as limited by a state agency due to public safety, wildlife management, ecological benefit, restoration, or other reason determined by state agency in public interest without preference over other uses of public lands. Requires agencies: avoid making determinations resulting in closure of public access site without replacement by new public access site within close proximity; and include public interest considerations of social equity, impacts on tribal members, and environmental impacts. Requires agency notify DSL prior to closing access to public lands open to access for recreational use of public use waterways. Requires DSL post notices on website for 30 days after agency notification of closure. Allows for restriction or closure of public access in case of emergencies, fire prevention, or critical wildlife management activities without prior public notice. Requires DSL submit report to Legislative Assembly describing amount of public lands open to access for recreational use of public use waterways that are restricted or closed and reason for each closure, and number of public access points opened.

Clarifies that Act does not affect title or ownership of surface waters or the bed and banks of waterways, and treaty or tribal rights to waterways; and jurisdiction or responsibility of agencies. Establishes prescriptive easement or way of necessity may not be acquired through recreational use of a waterway, portage, or by crossing or entering private property to use a public waterway. Requires DSL adopt rules to protect public health, safety, and private property. Requires DSL establish procedures by which person may request order from Director of DSL to alter type, incidence, or extent of recreational use of public waterway. Requires DSL adopt model rules

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or procedures for local governments to work with landowners to establish routes for recreational users on private property. Requires DSL adopt polices and procedures for reducing conflict. Requires DSL appoint advisory committee in drafting rules. Requires advisory committee include representatives of interested parties.

Establishes that violation of access to public use waterways is a class C violation. Requires Oregon Department of Transportation (ODOT) consider feasibility of providing public access to public use waterways for recreational use in state highway project design. Establishes that consideration of feasibility may not result in alteration of purpose of project or create legal obligation to modify existing facilities. Requires state highway project designs include public access to public use waterways if determined feasible.

Defines recreational use of a public use waterway as a recreational purpose, as means of limiting landowner liability (ORS 206.672).

Declares emergency, effective on passage.

Fiscal: Fiscal impact issued

Revenue: No revenue impact

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Deletes definition of landowner. Removes declaration of public use of waterways. Removes establishment of public right to recreational use of certain public use waterways. Removes authorization of use of public bridges and specific roads to access public use waterways. Removes requirement that Department of State Lands (DSL) coordinate with Oregon Parks and Recreation Department and Oregon State Marine Board to provide increased public access to public use waterways. Removes clarification that Bill does not affect titles, ownership, tribal treaties and lands held for tribes, or jurisdiction of state agencies. Removes requirement that DSL adopt rules necessary to provide access to public use waterways. Removes violation of access to public use waterways as Class C violation. Removes recreational use of a public use waterway as a public use.

Fiscal: May have fiscal impact, no statement yet issued

Revenue: May have revenue impact, no statement yet issued

-3 Replaces measure. Defines "public access site," and "state public lands." Requires state agencies to post notice on agency's website 30 days prior to date of restricting or closing access to a public access site. Exempts posting requirement for: emergencies including relating to domestic water supply source; fire prevention; critical wildlife management activities; restriction or closure adopted by rule by State Land Board; temporary restriction or closure for no more than 30 days; and temporary restriction or closure for routine maintenance or construction no more than 30 days. Requires state agencies that restricted, closed, opened, or reopened access to a public access site, submit report to Legislative Assembly on or before January 1 which includes: number and location of restrictions or closures to public access sites in previous calendar year including those exempt from posting; reason for restriction or closure; number and location of public access sites that agency opened, closed and reopened, or restricted access previous calendar year. Establishes that measure does not impact agency jurisdiction or responsibility. Authorizes state agencies to adopt rules to carry out provisions of measure. Establishes that measure does not restrict federal navigation servitude or restrict or expand any rights persons have under common law.

Defines "project," and "public access." Requires ODOT notify DSL, ORPD, and OSMB when recommending projects for funding under draft Statewide Transportation Improvement Program unless: proposed project is on limited access highway or ferry terminal; or ODOT determines that siting public access near proposed project is not

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feasible. Allows DSL, OPRD, and OSMB to propose changes to ODOT proposed projects to enable public access and provide ODOT with estimate of: availability of funding from other sources than State Highway Fund for public access sites near proposed project; likelihood and type of potential public use of public access near proposed project; and any impacts associate with siting public access near proposed project. Requires state agency that proposes project may not alter purpose or need of project based on proposed changes. Requires ODOT, prior to approval of project funding under Statewide Transportation Improvement Program, consider estimates of: available funding from State Highway Fund and other sources; likelihood and type of any potential public use of public access site; impacts associated with siting public access near proposed project; and impacts on traffic, roadways, or highway safety from siting public access near proposed project. Requires ODOT, to greatest extent practicable, not adversely impact existing lawful public access.

Effective on the 91st day following adjournment sine die.

FISCAL: Fiscal impact issued

REVENUE: No Revenue impact

BACKGROUND:

The public has rights to use an Oregon waterway for recreation if the waterway is navigable for title purposes, if the waterway is floatable for purposes of the Public Use Doctrine, or if it is both. If a waterway is navigable for title purposes, a person may generally use the submerged and submersible (beds and banks) land up to the line of ordinary high water. Any activity allowed on other public lands is permissible up to the line of ordinary high water. A person may go above the ordinary high water line only if absolutely necessary.

According to a 2005 Oregon Attorney General opinion, on waterways that have not been determined to be state-owned, the public is allowed to use the surface of the waterway for any legal activity unless the waterway is not wide, deep, or long enough for a boat to pass along it. The Department of State Lands (DSL) is responsible for the management of state-owned waterways.

House Bill 2835 would establish a public right to the recreational use of certain waterways.