

HB 2835 A STAFF MEASURE SUMMARY**Carrier:** Rep. Helm**House Committee On Natural Resources****Action Date:** 04/04/19**Action:** Do pass with amendments and rescind subsequent referral to Ways and Means. (Printed A-Eng.)**Vote:** 6-0-1-0**Yeas:** 6 - Barreto, Gorsek, Reardon, Smith DB, Sprenger, Witt**Exc:** 1 - McKeown**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Kailey Kornhauser, LPRO Analyst**Meeting Dates:** 3/19, 4/4**WHAT THE MEASURE DOES:**

Defines key terms. Requires state agencies to post notice on agency's website 30 days prior to date of restricting or closing access to a public use waterway access site. Exempts posting requirement for specified purposes. 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 each year, 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. Stipulates measure does not impact agency jurisdiction or responsibility. Authorizes state agencies to adopt rules to carry out provisions of measure. Declares that measure does not restrict federal navigation servitude or restrict or expand any rights persons have under common law. Requires Oregon Department of Transportation (ODOT) notify Department of State Lands (DSL), Oregon State Parks and Recreation Department (ORPD), and Oregon State Marine Board (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 existing public access near proposed project is not 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 existing public access near proposed project. Prohibits state agency that proposes project from altering 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 existing public access near proposed project; and impacts on traffic, roadways, or highway safety from existing public access near proposed project. Requires ODOT, to greatest extent practicable, not adversely impact existing lawful public access. Takes effect on the 91st day following adjournment sine die.

ISSUES DISCUSSED:

- Existing public access to public use waterways
- Transparency in public access closure
- Financial contribution of non-motorized boaters
- Public access on public lands

EFFECT OF AMENDMENT:

Replaces the measure.

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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, 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 is responsible for the management of state-owned waterways.

House Bill 2835 A would require state agencies to report restricted, closed, opened, or reopened public access to public use waterways, require the Oregon Department of Transportation to notify agencies when road projects will close public access, and consider impacts to public access when approving road project funding.