

# House Bill 2835

Sponsored by Representatives HELM, MARSH, POWER, WILLIAMS; Representative WITT, Senators DEMBROW, GOLDEN

## 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 public use waterways. Declares policies of State of Oregon related to recreational use of surface waters.

Authorizes use of public bridge, county road or certain state highway right of way to gain access to surface waters for recreational use.

Directs Department of State Lands to coordinate with local governments to provide increased public access to public use waterways. Requires public notification of closures of public lands access for recreational use of certain waterways.

Requires department to adopt rules.

Punishes violations by maximum of \$500 fine.

Requires Department of Transportation to consider feasibility of providing means of public access to public use waterways during design process for state highway project that includes construction of new bridge or reconstruction of existing bridge over public use waterway.

Includes recreational use of public use waterway as public use of land for purposes of limiting landowner liability.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to recreational use of waterways; creating new provisions; amending ORS 105.672; and de-  
3 clarating an emergency.

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

### **SECTION 1. As used in sections 1 to 8 of this 2019 Act:**

5 (1) **“Boat” has the meaning given that term in ORS 830.005.**

6 (2) **“Ephemeral stream” means a waterway with a bed that:**

7 (a) **Is located above the water table;**

8 (b) **Flows only during and shortly after periods of high precipitation; and**

9 (c) **Receives little or no ground water from springs or other sources.**

10 (3) **“Floatable” means susceptible to use in conjunction with a boat during some portion**  
11 **of the year, regardless of the presence of shallow riffles, exposed cobbles or other natural**  
12 **obstructions that may impede upstream or downstream passage.**

13 (4) **“Landowner” means a person holding recorded title to or interest in real property.**

14 (5) **“Line of ordinary high water” has the meaning given that term in ORS 274.005.**

15 (6) **“Public lands” means any land, or improvements thereon, owned by the State of**  
16 **Oregon.**

17 (7)(a) **“Public use waterway” means a waterway that:**

18 (A) **Is subject to tidal influence;**

19 (B) **Has been administratively or judicially determined navigable pursuant to ORS 274.400**  
20 **to 274.412; or**

21 (C) **Is floatable.**

22 (b) **“Public use waterway” does not mean an ephemeral stream or:**  
23

**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 (A) A channel, ditch or canal constructed from uplands;

2 (B) An industrial, municipal or domestic water system, including but not limited to ponds  
3 and single purpose water storage facilities excluding the lake, stream or reservoir from  
4 which the system obtains water; or

5 (C) Any other similar manmade facility.

6 (8) "Recreational use" includes use of a waterway for:

7 (a) Fishing and floating;

8 (b) Boating; and

9 (c) Other water-dependent pleasure activities and related unavoidable or incidental uses.

10 (9) "Surface water" means a body of water on the surface of the earth and its bed and  
11 banks up to the line of ordinary high water.

12 (10) "Waterway" means an identifiable area of surface water such as a river, lake or  
13 stream or a river segment.

14 **SECTION 2.** (1) The Legislative Assembly finds and declares that it is the policy of the  
15 State of Oregon that:

16 (a) As set forth in ORS 537.110, all water within this state from all sources of water  
17 supply belongs to the public.

18 (b) The public has certain rights to the recreational use of the surface waters of this  
19 state.

20 (c) The State of Oregon supports the public right to full use and enjoyment of all surface  
21 waters of this state, including the bed and banks as authorized by federal and state law, and  
22 consistent with the Oregon Admission Act of 1859 providing for free and complete use of  
23 certain of Oregon's waters as common highways for all inhabitants of the State of Oregon  
24 and all other citizens of the United States.

25 (d) Any Oregon river, stream, lake or bay, tidal or nontidal, including the bed and banks  
26 of the waterway, that is capable of commercial or recreational use, is a public use waterway  
27 upon which the public has the right to navigate or travel in the pursuit of any lawful activity.

28 (2) Consistent with the findings set forth in subsection (1) of this section, it is the policy  
29 of the State of Oregon to preserve and enhance public access sites and public access facilities  
30 for public use waterways.

31 (3) Therefore, the Legislative Assembly declares that it is in the public interest to es-  
32 tablish sections 1 to 8 of this 2019 Act to provide for reasonable legal access for recreational  
33 use of the public use waterways of this state in a manner that is consistent with and sup-  
34 portive of public use rights as authorized by the Oregon Admission Act of 1859 and applicable  
35 state and federal law.

36 **SECTION 3.** (1) Except as provided in subsections (2) and (3) of this section, an individual  
37 may make recreational use of a public use waterway up to the line of ordinary high water  
38 without the permission of the landowner of the land underlying or riparian to the public use  
39 waterway.

40 (2) In order to make recreational use of a public use waterway, an individual may not  
41 gain access to the exposed shore area of the public use waterway except:

42 (a) From the water;

43 (b) From a public access site, including but not limited to public access sites described  
44 in sections 4, 5 and 6 of this 2019 Act; or

45 (c) With the permission of the landowner of land riparian to the waterway.

1 (3) The owner or operator of a dam, water diversion structure, flume, canal or water  
 2 diversion tunnel, or related electrical generation or water control structures and equipment,  
 3 may restrict access in or around a facility described in this subsection as required to protect  
 4 the public from injury or loss of life.

5 (4) An individual making lawful recreational use of a public use waterway under this  
 6 section may, above the line of ordinary high water, portage over or around barriers in the  
 7 least intrusive manner possible, avoiding damage to the landowner's land and violation of the  
 8 landowner's rights.

9 **SECTION 4.** (1) An individual may gain access to a public use waterway for recreational  
 10 use under section 3 of this 2019 Act by using:

11 (a) A public bridge or the bridge right of way and abutments on:

12 (A) A public road designated as a county road under ORS 368.016; or

13 (B) A state highway other than an interstate highway or a statewide highway, as those  
 14 terms are defined in ORS 374.302; or

15 (b) The right of way of a public road or state highway described in paragraph (a)(A) or  
 16 (B) of this subsection.

17 (2) When accessing a public use waterway as authorized by subsection (1) of this section,  
 18 an individual must stay within the right of way of the bridge, county road or state highway.

19 (3) Unless otherwise specified in an applicable easement or deed, the width of the right  
 20 of way of a public bridge for purposes of this section is the same width as the right of way  
 21 of the road to which the bridge is attached.

22 (4)(a) The provisions of this section do not create or extinguish any right related to  
 23 public roads or state highways established by prescriptive use that existed on the effective  
 24 date of this 2019 Act.

25 (b) This section may not be construed to authorize activities on a public bridge, or within  
 26 a public bridge right of way, that are not provided for in subsections (1) to (3) of this section  
 27 and are otherwise prohibited by law.

28 **SECTION 5.** (1) In order to further the policies established in section 2 of this 2019 Act  
 29 and to preserve the right of public access to surface waters, the Department of State Lands,  
 30 in cooperation with the State Parks and Recreation Department and the State Marine Board,  
 31 shall coordinate with local governments to provide increased public access to public use  
 32 waterways.

33 (2) The Department of State Lands may:

34 (a) Ensure that public use waterway access sites are posted for public use;

35 (b) Maintain parking and trash disposal facilities at public use waterway access sites; and

36 (c) Maintain sites that provide reasonable access to the public for recreational use of  
 37 public use waterways.

38 **SECTION 6.** (1) Public lands open to access for recreational use of public use waterways  
 39 shall remain open to access for recreational use of public use waterways, except as limited  
 40 by a state agency for reasons of public safety, wildlife management, ecological benefit or  
 41 restoration or for any other reason determined by a state agency to be in the public interest.  
 42 A state agency is not required to give preference to recreational use of public use waterways  
 43 over other uses of public lands.

44 (2) In implementing subsection (1) of this section, state agencies shall, to the greatest  
 45 extent practicable:

1 (a) Avoid making determinations that result in the closure of a public access site for  
 2 recreational use of a public use waterway without replacement by a new public access site  
 3 on the public use waterway that is within close proximity to the closed public access site;  
 4 and

5 (b) Include in any process for determining whether closure is in the public interest con-  
 6 siderations of:

7 (A) Social equity and the impacts of closing access on underserved populations;

8 (B) The impacts of closing access on tribal members exercising the treaty-reserved rights  
 9 of an Indian tribe; and

10 (C) Environmental impacts, including but not limited to impacts on vegetation, wildlife  
 11 habitat and water quality.

12 (3)(a) Before a state agency restricts or closes access to public lands open to access for  
 13 recreational use of public use waterways, the state agency shall notify the Department of  
 14 State Lands of the plans to restrict or close access to the public lands in a sufficient amount  
 15 of time to allow the department to post notice pursuant to paragraph (b) of this subsection.

16 (b) In order to give the public notice that a state agency plans to restrict or close access  
 17 to public lands open to access for recreational use of public use waterways and before a state  
 18 agency may restrict or close access to the public lands, the department shall post notice on  
 19 the department's website for 30 days after it receives notification under paragraph (a) of this  
 20 subsection.

21 (c) Paragraphs (a) and (b) of this subsection do not apply to restrictions or closures for:

22 (A) Emergencies.

23 (B) Fire prevention pursuant to the provisions of ORS 401.165 to 401.236 or 477.535 to  
 24 477.550.

25 (C) Critical wildlife management activities.

26 (4) On or before January 1 of each year, the department shall submit a report to the  
 27 Legislative Assembly that describes:

28 (a) The amount, in acres, of public lands open to access for recreational use of public use  
 29 waterways that has been restricted or closed to access for recreational use of public use  
 30 waterways by state agencies in the previous calendar year and the reasons for each closure;  
 31 and

32 (b) The number of individual public access sites for recreational use of public use  
 33 waterways that have been opened by state agencies in the previous calendar year.

34 **SECTION 7. (1) Nothing in sections 1 to 8 of this 2019 Act shall be construed to:**

35 (a) Affect the title to or ownership of the surface waters or the bed and banks of any  
 36 navigable or nonnavigable waterway within this state;

37 (b) Affect or modify any treaty or other rights of any Indian tribe;

38 (c) Affect lands held in trust by the United States Secretary of the Interior for an Indian  
 39 tribe or an individual member of an Indian tribe, or other lands acquired by the United  
 40 States Army Corps of Engineers and administered by the United States Secretary of the In-  
 41 terior for the benefit of an Indian tribe or an individual member of an Indian tribe; or

42 (d) Affect the jurisdiction or responsibility of any state agency with respect to the oper-  
 43 ation of boats, hunting and fishing seasons, method of take or limits for hunting and fishing,  
 44 water pollution or fire control, except that a state agency shall endeavor to perform the  
 45 agency's responsibilities in a manner that is consistent with the provisions of sections 1 to

1 **8 of this 2019 Act.**

2 **(2) A prescriptive easement or way of necessity under Oregon common law may not be**  
 3 **acquired through:**

4 **(a) The recreational use of public use waterways;**

5 **(b) Any portage over or around barriers; or**

6 **(c) The entering or crossing of private property to reach public use waterways to engage**  
 7 **in recreational use.**

8 **SECTION 8. (1) The Department of State Lands shall adopt rules as necessary to carry**  
 9 **out the provisions of sections 1 to 8 of this 2019 Act.**

10 **(2) Rules adopted under this section may include, but need not be limited to:**

11 **(a) Rules to protect the public health and safety and to protect public and private prop-**  
 12 **erty.**

13 **(b) Procedures by which a person may request an order from the Director of the De-**  
 14 **partment of State Lands to alter the type, incidence or extent of recreational use of a public**  
 15 **use waterway. The procedures shall include provisions for public notice, opportunity for**  
 16 **public comment and written findings and a requirement that the order be based upon good**  
 17 **cause shown for any restrictions or alterations of recreational use.**

18 **(c) Model rules or procedures for local governments, as defined in ORS 174.116, to work**  
 19 **with landowners to establish portage routes over or around barriers, for the purposes of**  
 20 **protecting the landowner's property and providing reasonable routes for recreational users**  
 21 **of public use waterways.**

22 **(d) Policies or procedures for working with landowners, recreational users and other in-**  
 23 **terested parties to resolve and reduce conflicts between users of public use waterways.**

24 **(3) The department shall appoint an advisory committee to advise the department in**  
 25 **drafting the rules required by this section and in implementing and administering the duties**  
 26 **of the department under sections 1 to 8 of this 2019 Act. The advisory committee shall in-**  
 27 **clude representatives of interested parties that may include, but need not be limited to, the**  
 28 **outdoor recreation community, the outdoor recreation industry, members of an Indian tribe,**  
 29 **fishermen, hunters, boaters, the environmental community, other outdoor recreation**  
 30 **stakeholders and appropriate state, regional and local governmental entities.**

31 **SECTION 9. A violation of section 3 of this 2019 Act or a rule adopted under section 8**  
 32 **of this 2019 Act is a Class C violation.**

33 **SECTION 10. (1) As used in this section, "public use waterway" has the meaning given**  
 34 **that term in section 1 of this 2019 Act.**

35 **(2)(a) During the design process for a state highway project that includes the con-**  
 36 **struction of a new bridge or reconstruction of an existing bridge across a public use**  
 37 **waterway, excluding a state highway project on a limited access highway or ferry terminal,**  
 38 **the Department of Transportation shall consider the feasibility of providing, as part of the**  
 39 **design of the state highway project, a means of public access to the public use waterway for**  
 40 **recreational use.**

41 **(b) Consideration of feasibility under paragraph (a) of this subsection must:**

42 **(A) Include an evaluation of the suitability of the bridge, the bridge right of way and**  
 43 **abutments for providing a means of public access to the public use waterway; and**

44 **(B) Take into account the implications of providing for a means of public access to the**  
 45 **public use waterway from the bridge, the bridge right of way or abutments.**

1 (c) Consideration of feasibility may not:

2 (A) Result in an alteration of the purpose or need for the proposed state highway project;

3 or

4 (B) Create a legal obligation to modify existing public access to public use waterways  
5 from the state highway or state highway facilities.

6 (3) If providing a means for public access to the public use waterway from the bridge,  
7 bridge right of way or abutments is determined to be feasible, subsequent development of the  
8 state highway project must include design for public access to the public use waterway. A  
9 finding that providing a means for public access is not feasible does not require the alter-  
10 ation of public access within the vicinity of the project that exists at the time the develop-  
11 ment of the state highway project occurs.

12 (4) To the greatest extent practicable, when constructing a state highway project, the  
13 department may not adversely impact preexisting, lawful public access to a public use  
14 waterway.

15 **SECTION 11.** ORS 105.672 is amended to read:

16 105.672. As used in ORS 105.672 to 105.696:

17 (1) "Charge":

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

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

22 (c) Does not include the fee for a winter recreation parking permit or any other parking fee of  
23 \$15 or less per day.

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

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

26 (4) "Owner" means:

27 (a) The possessor of any interest in any land, including but not limited to the holder of any legal  
28 or equitable title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right  
29 of way or a person in possession of the land;

30 (b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this sub-  
31 section, while acting within the scope of assigned duties; and

32 (c) A director, partner, general partner, shareholder, limited liability company member, limited  
33 liability partner or limited partner of a person described in paragraph (a) of this subsection.

34 (5) "Recreational purposes" includes, but is not limited to[,]:

35 (a) Outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking,  
36 nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying histor-  
37 ical, archaeological, scenic or scientific sites or volunteering for any public purpose project[.]; and

38 (b) Recreational use of a public use waterway as those terms are defined in section 1 of  
39 this 2019 Act.

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

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

43 **SECTION 12.** This 2019 Act being necessary for the immediate preservation of the public  
44 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect  
45 on its passage.

