

Requested by Representative HELM

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2835**

1 On page 1 of the printed bill, line 2, after “waterways;” delete the rest  
2 of the line and delete line 3.

3 Delete lines 5 through 23 and delete pages 2 through 6 and insert:

4 **“SECTION 1. As used in this section and section 2 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 precipi-**  
9 **tation; and**

10 **“(c) Receives little or no ground water from springs or other**  
11 **sources.**

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

16 **“(4) ‘Line of ordinary high water’ has the meaning given that term**  
17 **in ORS 274.005.**

18 **“(5) ‘Public lands’ means any land, or improvements thereon,**  
19 **owned by the State of Oregon.**

20 **“(6)(a) ‘Public use waterway’ means a waterway that:**

21 **“(A) Is subject to tidal influence;**

1       **“(B) Has been administratively or judicially determined navigable**  
2 **pursuant to ORS 274.400 to 274.412; or**

3       **“(C) Is floatable.**

4       **“(b) ‘Public use waterway’ does not mean an ephemeral stream or:**

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

6       **“(B) An industrial, municipal or domestic water system, including**  
7 **but not limited to ponds and single purpose water storage facilities**  
8 **excluding the lake, stream or reservoir from which the system obtains**  
9 **water; or**

10       **“(C) Any other similar manmade facility.**

11       **“(7) ‘Recreational use’ includes use of a waterway for:**

12       **“(a) Fishing and floating;**

13       **“(b) Boating; and**

14       **“(c) Other water-dependent pleasure activities and related unavoid-**  
15 **able or incidental uses.**

16       **“(8) ‘Surface water’ means a body of water on the surface of the**  
17 **earth and its bed and banks up to the line of ordinary high water.**

18       **“(9) ‘Waterway’ means an identifiable area of surface water such**  
19 **as a river, lake or stream, or a river segment.**

20       **“SECTION 2. (1) Public lands open to access for recreational use**  
21 **of public use waterways shall remain open to access for recreational**  
22 **use of public use waterways, except as limited by a state agency for**  
23 **reasons of public safety, wildlife management, ecological benefit or**  
24 **restoration, or for any other reason determined by a state agency to**  
25 **be in the public interest. A state agency is not required to give pref-**  
26 **erence to recreational use of public use waterways over other uses of**  
27 **public lands.**

28       **“(2) In implementing subsection (1) of this section, state agencies**  
29 **shall, to the greatest extent practicable:**

30       **“(a) Avoid making determinations that result in the closure of a**

1 public access site for recreational use of a public use waterway without  
2 replacement by a new public access site on the public use waterway  
3 that is within close proximity to the closed public access site; and

4 “(b) Include, in any process for determining whether closure is in  
5 the public interest, considerations of:

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

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

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

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

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

24 “(c) Paragraphs (a) and (b) of this subsection do not apply to re-  
25 strictions or closures for:

26 “(A) Emergencies.

27 “(B) Fire prevention pursuant to the provisions of ORS 401.165 to  
28 401.236 or 477.535 to 477.550.

29 “(C) Critical wildlife management activities.

30 “(4) On or before January 1 of each year, the department shall

1 submit a report to the Legislative Assembly that describes:

2 “(a) The amount, in acres, of public lands open to access for rec-  
3 reational use of public use waterways that has been restricted or  
4 closed to access for recreational use of public use waterways by state  
5 agencies in the previous calendar year and the reasons for each clo-  
6 sure; and

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

10 “(5) Nothing in this section shall be construed to affect the juris-  
11 diction or responsibility of any state agency with respect to the oper-  
12 ation of boats, hunting and fishing seasons, method of take or limits  
13 for hunting and fishing, water pollution or fire control, except that a  
14 state agency shall endeavor to perform the agency’s responsibilities in  
15 a manner that is consistent with the provisions of this section.

16 “(6) The Department of State Lands may adopt rules as necessary  
17 to carry out the provisions of this section.

18 **“SECTION 3. (1) As used in this section, ‘public use waterway’ has**  
19 **the meaning given that term in section 1 of this 2019 Act.**

20 “(2)(a) During the design process for a state highway project that  
21 includes the construction of a new bridge or reconstruction of an ex-  
22 isting bridge across a public use waterway, excluding a state highway  
23 project on a limited access highway or ferry terminal, the Department  
24 of Transportation shall consider the feasibility of providing, as part  
25 of the design of the state highway project, a means of public access  
26 to the public use waterway for recreational use.

27 “(b) Consideration of feasibility under paragraph (a) of this sub-  
28 section must:

29 “(A) Include an evaluation of the suitability of the bridge, the  
30 bridge right of way and abutments for providing a means of public

1 access to the public use waterway; and

2 “(B) Take into account the implications of providing for a means  
3 of public access to the public use waterway from the bridge, the bridge  
4 right of way or abutments.

5 “(c) Consideration of feasibility may not:

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

8 “(B) Create a legal obligation to modify existing public access to  
9 public use waterways from the state highway or state highway facili-  
10 ties.

11 “(3) If providing a means for public access to the public use  
12 waterway from the bridge, bridge right of way or abutments is deter-  
13 mined to be feasible, subsequent development of the state highway  
14 project must include design for public access to the public use  
15 waterway. A finding that providing a means for public access is not  
16 feasible does not require the alteration of public access within the vi-  
17 cinity of the project that exists at the time the development of the  
18 state highway project occurs.

19 “(4) To the greatest extent practicable, when constructing a state  
20 highway project, the department may not adversely impact preexist-  
21 ing, lawful public access to a public use waterway.”.

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