

Representative Ben C. Ferry proposes the following substitute bill:

**RECREATIONAL USE OF PUBLIC WATERS ON PRIVATE
PROPERTY**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ben C. Ferry

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions relating to the recreational use of public waters that flow over privately owned beds.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies a provision relating to fencing;
- ▶ establishes a criminal penalty for:
 - cutting a fence; and
 - violating a provision in a part;
- ▶ authorizes a person to engage in certain recreational activities in specified public waters;
- ▶ authorizes a person in certain circumstances to touch certain private beds beneath specified public waters;
- ▶ specifies the public waters on certain private property in which a person may engage in a recreational activity;
- ▶ creates a Recreational Access Board;



- 26 ▶ establishes membership and duties for the Recreational Access Board;
- 27 ▶ authorizes the Recreational Access Board to make a rule listing public waters in
- 28 which a person may engage in a recreational activity; and
- 29 ▶ establishes procedures for applications to the Recreational Access Board.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill coordinates with H.B. 153, Trespass Law Amendments, by modifying
34 language.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **4-26-4**, as enacted by Laws of Utah 1979, Chapter 2

38 **63-34-3**, as last amended by Laws of Utah 1996, Chapter 159

39 **63I-1-273**, as last amended by Laws of Utah 2008, Chapters 148, 311 and renumbered
40 and amended by Laws of Utah 2008, Chapter 382

41 ENACTS:

42 **73-6a-101**, Utah Code Annotated 1953

43 **73-6a-102**, Utah Code Annotated 1953

44 **73-6a-201**, Utah Code Annotated 1953

45 **73-6a-202**, Utah Code Annotated 1953

46 **73-6a-203**, Utah Code Annotated 1953

47 **73-6a-301**, Utah Code Annotated 1953

48 **73-6a-302**, Utah Code Annotated 1953

49 **73-6a-303**, Utah Code Annotated 1953

50 **73-6a-304**, Utah Code Annotated 1953

51 **73-6a-401**, Utah Code Annotated 1953

52 **73-6a-402**, Utah Code Annotated 1953



54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **4-26-4** is amended to read:

56 **4-26-4. Failure to close entrance to enclosure -- Class "B" or "C" misdemeanor --**

57 **Damages.**58 [~~Any person who willfully~~]59 (1) A person is guilty of a class C misdemeanor if the person willfully:60 (a) throws down a fence; or61 (b) (i) opens bars or gates into any enclosure [~~other than~~] that is not:62 (A) the person's own enclosure; or [~~into any~~]63 (B) an enclosure jointly owned or occupied by [~~such~~] the person and others[-]; and64 (ii) leaves [it] the enclosure open [~~is guilty of a class "C" misdemeanor, and is~~].65 (2) A person is guilty of a class B misdemeanor if the person willfully cuts a fence.66 (3) A person who performs an act described ~~H→~~ [is] in ~~←H~~ this section is also liable66a ~~H→~~ [~~in~~] for ←H damage for67 any injury sustained by any person as a result of [~~such an~~] the act.68 Section 2. Section **63-34-3** is amended to read:69 **63-34-3. Department of Natural Resources created -- Boards, councils, and**
70 **divisions within department.**

71 (1) There is created within state government the Department of Natural Resources.

72 (2) The Department of Natural Resources comprises the following boards, councils,
73 and divisions:

74 (a) Board of Water Resources;

75 (b) Forestry, Fire and State Lands Advisory Council;

76 (c) Board of Oil, Gas and Mining;

77 (d) Board of Parks and Recreation;

78 (e) Wildlife Board;

79 (f) Riverway Enhancement Advisory Council;

80 (g) Board of the Utah Geological Survey;

81 (h) Water Development Coordinating Council;

82 (i) Division of Water Rights;

83 (j) Division of Water Resources;

84 (k) Division of Forestry, Fire and State Lands;

85 (l) Division of Oil, Gas and Mining;

86 (m) Division of Parks and Recreation;

87 (n) Division of Wildlife Resources; [~~and~~]

88 (o) Utah Geological Survey[-]; and
89 (p) Recreational Access Board, created in Section 73-6a-301.

90 Section 3. Section **63I-1-273** is amended to read:

91 **63I-1-273. Repeal dates, Title 73.**

92 (1) Title 73, Chapter 27, State Water Development Commission, is repealed December
93 31, 2018.

94 (2) The instream flow water right for trout habitat established in Subsection 73-3-30(3)
95 is repealed December 31, 2018.

96 (3) Title 73, Chapter 6a, Part 3, Recreational Access Board, is repealed July 1, 2015.

97 Section 4. Section **73-6a-101** is enacted to read:

98 **CHAPTER 6a. RECREATIONAL USE OF PUBLIC WATER**

99 **Part 1. General Provisions**

100 **73-6a-101. Title.**

101 This chapter is known as "Recreational Use of Public Water."

102 Section 5. Section **73-6a-102** is enacted to read:

103 **73-6a-102. Definitions.**

104 As used in this chapter:

105 (1) "Bed" means an area that is:

106 (a) adjacent within five feet of a water body; and

107 (b) beneath the ordinary high water mark.

108 (2) "Board" means the Recreational Access Board created in Section 73-6a-301.

109 (3) "Indian land" means land that is:

110 (a) held in trust by the United States for an Indian tribe or a member of an Indian tribe;

111 or

112 (b) owned by an Indian or Indian tribe and is subject to restrictions against alienation.

113 (4) "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized
114 group or community that is recognized as eligible for the special programs and services
115 provided by the United States to Indians because of their status as Indians.

116 (5) "Navigable water body" means a natural watercourse that is useful for commerce in
117 the water body's ordinary condition in the customary modes of trade and travel as of January 4,
118 1896.

119 (6) "Ordinary high water mark" means the line that a water body impresses on the soil:

120 (a) by covering the soil long enough to ordinarily deprive the soil of terrestrial

121 vegetation; and

122 (b) at the level where the water body would normally stand during the high water

123 period when the water body is not affected by a flood or drought.

124 (7) "Permission" is as defined in Section 23-20-14.

125 (8) "Private bed" means the bed of a water body that is not a navigable water body.

126 (9) "Private water" means water that a person, with a valid right to use the water, has

127 reduced to actual, physical possession and exclusive control by placing the water in a

128 receptacle for storage or conveyance.

129 (10) "Property to which access is restricted" means real property:

130 (a) that is cultivated land, as defined in Section 23-20-14;

131 (b) that is:

132 (i) properly posted, as defined in Section 23-20-14; or

133 (ii) posted as described in Subsection 76-6-206(2)(b)(iii);

134 (c) that is fenced or enclosed as described in Subsection 76-6-206(2)(b)(ii); or

135 (d) that the owner or a person authorized to act on the owner's behalf has requested a
136 person to leave as provided by:

137 (i) Section 23-20-14; or

138 (ii) Subsection 76-6-206(2)(b)(i).

139 (11) (a) "Public water" means water:

140 (i) described in Section 73-1-1; and

141 (ii) flowing on the surface:

142 (A) within a natural channel; or

143 (B) ponded in a natural lake or reservoir on a natural channel.

144 (b) "Public water" does not include private water.

145 (12) "Recreational activity" means an activity that is:

146 (a) lawful;

147 (b) engaged in:

148 (i) for a recreational purpose; or

149 (ii) a commercial purpose if a person is guiding or outfitting another person who is

150 engaging in an activity listed in Subsection (12)(c) for a recreational purpose; and

151 (c) one of the following:

152 (i) fishing;

153 (ii) swimming; or

154 (iii) floating on a vessel.

155 (13) (a) "Single family dwelling" means a structure constructed and customarily
156 occupied by one or more persons for the principle use as a single unit of residential housing.

157 (b) "Single family dwelling" does not include a:

158 (i) mobile home;

159 (ii) trailer;

160 (iii) duplex;

161 (iv) multi-unit apartment building;

162 (v) commercial structure;

163 (vi) outbuilding;

164 (vii) barn;

165 (viii) shed; or

166 (ix) structure with a purpose similar to the structures listed in Subsections (13)(b)(i)
167 through (viii), regardless of human occupancy.

168 (14) "Vessel" means a watercraft capable of floating and transporting a person on the
169 surface of the water, including a:

170 (a) boat;

171 (b) raft;

172 (c) canoe; or

173 (d) kayak.

174 Section 6. Section **73-6a-201** is enacted to read:

175 **Part 2. Recreational Use of Private Beds**

176 **73-6a-201. Recreational use of public waters over private beds.**

177 (1) Except as provided by Subsection (2), a person who touches a private bed is subject
178 to liability for trespass under:

179 (a) Section 23-20-14;

180 (b) Section 76-6-206; and

- 181 (c) a civil action for a claim arising out of touching the private bed.
182 (2) A person may engage in a recreational activity:
183 (a) on or within a public water:
184 (i) listed in:
185 (A) Section 73-6a-202; or
186 (B) a rule made by the board under Section 73-6a-302;
187 (ii) located on or adjacent to property to which access is restricted; and
188 (iii) with enough water to support the recreational activity; and
189 (b) by incidentally touching the bed of a public water described in Subsection (2)(a).
190 (3) While engaging in a recreational activity as authorized by Subsection (2), a person
191 may leave the bed if:
192 (a) the person has permission to leave the bed; or
193 (b) (i) an obstruction materially interferes with the recreational activity; and
194 (ii) the person walks or portages around the obstruction in the most direct and least
195 obtrusive manner to re-enter the public water at the nearest safe point above or below the
196 obstruction.
197 (4) Except as provided by Subsection (3), a person engaging in a recreational activity
198 as authorized by Subsection (2), may only enter or exit the surface or bed of a public water:
199 (a) on public property as authorized by the entity with jurisdiction over the use of the
200 public property;
201 (b) on private property that is not property to which access is restricted; or
202 (c) on private property if an easement or other lawful access is obtained.
203 (5) A person may not engage in a recreational activity authorized by Subsection (2) if
204 the recreational activity:
205 (a) destroys, damages, removes, or alters real or personal property, including a:
206 (i) fence, as provided in Section 4-26-4;
207 (ii) structure;
208 (iii) diversion works;
209 (iv) vegetation;
210 (v) soil; or
211 (vi) rock;

- 212 (b) alters or obstructs water flows;
- 213 (c) involves construction or maintenance of a structure on the bed; or
- 214 (d) is undertaken on:
- 215 (i) horseback;
- 216 (ii) a motor vehicle, as defined in Section 41-6a-102; or
- 217 (iii) an off-highway vehicle, as defined in Section 41-22-2.

218 Section 7. Section **73-6a-202** is enacted to read:

219 **73-6a-202. Public waters available for recreational use.**

220 As authorized by Section 73-6a-201, a person may engage in a recreational activity on
221 or in the following public waters, except where the public water flows over Indian land:

- 222 (1) Bear River from the Idaho state line in Cache County to the Great Salt Lake in Box
223 Elder County;
- 224 (2) East Fork of the Little Bear River and Little Bear River from the outlet of
225 Porcupine Reservoir downstream to Highway 30;
- 226 (3) Logan River from Highway 30 upstream to the United States Forest Service
227 boundary line in Logan Canyon;
- 228 (4) Price River from the confluence with the White River and Lower Fish Creek
229 downstream to the State Road 10 bridge;
- 230 (5) Jordan River from Utah Lake to the Great Salt Lake;
- 231 (6) Duchesne River from the Highway 40 bridge in Myton upstream to the United
232 States Forest Service boundary line on both the North Fork and West Fork of the Duchesne
233 River;
- 234 (7) Strawberry River from the confluence with the Duchesne River upstream to the
235 Strawberry Reservoir dam;
- 236 (8) Sevier River from the confluence with Asay Creek south of the Highway 89 bridge
237 downstream to Yuba Reservoir;
- 238 (9) Weber River from the confluence with the Gardners Fork in Summit County near
239 the United States National Forest Service Road 138 downstream to the Great Salt Lake;
- 240 (10) Bear River from the Wyoming state line east of Woodruff downstream to the
241 Wyoming state line northeast of Sage Creek Junction;
- 242 (11) Bear River from the Wyoming state line upstream to the confluence with the East

- 243 Fork of the Bear River;
 244 (12) Provo River from Utah Lake upstream to the Soapstone Guard Station off State
 245 Road 150 in Wasatch County;
 246 (13) Ogden River from the Pineview Reservoir dam downstream to the confluence
 247 with the Weber River;
 248 (14) South Fork of the Ogden River from Pineview Reservoir upstream to the Causey
 249 Reservoir dam;
 250 (15) Lower Sevier River from the Yuba dam downstream to Sevier Lake;
 251 (16) White River from the Colorado state line in Uintah County downstream to the
 252 confluence with the Green River;
 253 (17) Blacksmith Fork River from the State Road 165 bridge upstream to Lions Hollow;
 254 (18) Logan River from the Red Banks Campground to the Idaho state line;
 255 (19) Currant Creek from the confluence with the Strawberry River upstream to the
 256 United States Forest Service boundary line;
 257 (20) Lake Fork River upstream from the Highway 87 bridge to the United States Forest
 258 Service boundary line;
 259 (21) Diamond Fork from the confluence with Spanish Fork River upstream to the
 260 United States Forest Service boundary line;
 261 (22) East Fork of the Sevier River from the Garfield County and Kane County line to
 262 the confluence with the Sevier River;
 263 (23) East Canyon Creek from the confluence with the Weber River upstream to the
 264 Interstate 80 bridge;
 265 (24) Lost Creek from the Lost Creek Reservoir dam downstream to the confluence
 266 with the Weber River;
 267 (25) Thistle Creek from the confluence with Spanish Fork River upstream to the
 268 confluence with Nebo Creek;
 269 (26) Beaver River from $\hat{H} \rightarrow$ west of $\leftarrow \hat{H}$ Minersville Reservoir $\hat{H} \rightarrow$, beginning at the
 269a fence line directly south of the Questar Natural Gas enclosure at mile post 94.7 on State
 269b Road 21 $\leftarrow \hat{H}$ downstream to the State Road 130
 270 bridge in Minersville;
 271 (27) Spanish Fork River from Utah Lake to the confluence with Thistle Creek at the
 272 Thistle mudslide dam;
 273 (28) Fremont River from the State Road 24 bridge east of Loa to Capitol Reef National

274 Park;

275 (29) Huntington Creek from the United States Forest Service boundary line in

276 Huntington Canyon downstream to the State Road 10 bridge; ~~H→~~ [and] ~~←H~~

277 (30) Lower Fish Creek from Scofield Dam to the confluence with the White River ~~H→~~ [;] ;

277a (31) Beaver Creek from the confluence with the Weber River upstream to the United
277b States Forest Service boundary line;

277c (32) Mill Creek from the Wyoming state line upstream to the United States Forest
277d Service Road 058;

277e (33) West Fork of the Bear River from the confluence with the Bear River upstream to
277f the United States Forest Service boundary line;

277g (34) Beaver Creek from Minersville Reservoir upstream to the United States Forest
277h Service boundary line;

277i (35) Smith and Morehouse Creek from the confluence with the Weber River upstream
277j to the United States Forest Service boundary line;

277k (36) Ashley Creek from the Thornburg Diversion near Steinaker Reservoir upstream to
277l the United States Bureau of Land Management boundary line;

277m (37) Cottonwood Creek from the confluence with Straight Canyon Creek downstream
277n to the State Highway 10 bridge;

277o (38) San Pitch River from Highway 116 upstream to the confluence with Dry Creek;

277p (39) Big Creek from the confluence with the Bear River upstream to the United States
277q Forest Service boundary;

277r (40) Panguitch Creek from the Panguitch Lake dam downstream to the confluence with
277s the Sevier River; and

277t (41) Lower South Fork of the Provo River from the confluence with the Provo River
277u upstream to United States National Forest Service Trail 58. ~~←H~~

278 Section 8. Section **73-6a-203** is enacted to read:

279 **73-6a-203. Penalty.**

280 A person who violates this part is guilty of a class B misdemeanor.

281 Section 9. Section **73-6a-301** is enacted to read:

282 **Part 3. Recreational Access Board**

283 **73-6a-301. Recreational Access Board -- Creation -- Membership.**

284 (1) There is created within the Department of Natural Resources the Recreational
285 Access Board consisting of nine members appointed by the governor with the consent of the
286 Senate.

- 287 (2) The board shall consist of:
288 (a) one member of the general public; and
289 (b) members nominated by the following interests:
290 (i) one individual from among nominees of the Department of Agriculture and Food;
291 (ii) one individual from among nominees of an organization that promotes the
292 agricultural industry;
293 (iii) one individual from among nominees of an organization that promotes private real
294 property interests;
295 (iv) one individual from among nominees of the Division of Wildlife Resources;
296 (v) one individual who promotes floating on a vessel from among nominees of the
297 Division of Parks and Recreation;
298 (vi) one individual from among nominees of an organization that promotes sport
299 fishing;
300 (vii) one individual from among nominees of an organization that promotes
301 conservation districts; and
302 (viii) one individual from among nominees of an organization that promotes the
303 industry of outfitting a person to fish or float on a vessel.
304 (3) (a) Each nominating entity shall nominate at least two, but no more than four,

305 individuals to the governor for the applicable position or vacancy that occurs on the board.

306 (b) The candidates nominated under Subsection (2) and the members appointed by the
307 governor may not be:

308 (i) an employee of the nominating entity; or

309 (ii) a member of the Legislature.

310 (4) (a) Except as required by Subsection (4)(b), the governor shall appoint a member to
311 a three-year term.

312 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
313 time of appointment, adjust the length of terms to ensure that the terms of board members are
314 staggered so at least three members are appointed each year.

315 (c) If a vacancy occurs, the nominating entity shall submit a list of nominees as
316 provided in Subsection (3) to the governor and the governor shall appoint a replacement for the
317 unexpired term.

318 (d) A board member may serve two terms unless the governor determines an additional
319 term is necessary due to exceptional circumstances.

320 (5) (a) The board shall elect a chair and vice chair from its membership.

321 (b) Five members of the board shall constitute a quorum.

322 (c) A vote of the majority of the quorum at a meeting is necessary to take action on
323 behalf of the board.

324 (d) The executive director of the Department of Natural Resources or the executive
325 director's designee shall act as secretary to the board but is not a voting member of the board.

326 (6) (a) The board shall hold a sufficient number of meetings each year to expeditiously
327 conduct its business.

328 (b) A meeting may be called by the chair upon five days notice to the board members.

329 (c) A meeting may be held at the Salt Lake City office of the Department of Natural
330 Resources or elsewhere in the state as determined by the board.

331 (7) (a) (i) A member who is not a government employee may not receive compensation
332 or benefits for the member's service, but may receive per diem and expenses incurred in the
333 performance of the member's official duties at the rates established by the Division of Finance
334 under Sections 63A-3-106 and 63A-3-107.

335 (ii) A member may decline to receive per diem and expenses for the member's service.

336 (b) (i) A state government officer and employee member who does not receive salary,
337 per diem, or expenses from the agency the member represents for the member's service may
338 receive per diem and expenses incurred in the performance of the member's official duties at
339 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

340 (ii) A state government officer and employee member may decline to receive per diem
341 and expenses for the member's service.

342 (8) The governor may remove at any time a member for:

343 (a) official misconduct; or

344 (b) habitual or willful neglect of duty.

345 Section 10. Section **73-6a-302** is enacted to read:

346 **73-6a-302. Recreational Access Board -- Authority -- Responsibility.**

347 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
348 this part, the board may make rules to:

349 (a) establish an application form;

350 (b) establish procedures relating to the application process;

351 (c) apply and quantify the criteria established under Section 73-6a-303; and

352 (d) create a list of public waters on or within which a person may engage in a
353 recreational activity as authorized by Section 73-6a-201.

354 (2) By rule, the board may add a public water segment to the list created under
355 Subsection (1) if:

356 (a) a person submits an application under Section 73-6a-304; and

357 (b) the board:

358 (i) meets the notice and meeting requirements of Section 73-6a-304; and

359 (ii) determines that the public water segment meets the criteria established in

360 Subsection 73-6a-303(1).

361 (3) By rule, the board may remove a public water segment from the list created under
362 Subsection (1) if:

363 (a) a person submits an application under Section 73-6a-304; and

364 (b) the board:

365 (i) meets the notice and meeting requirements of Section 73-6a-304; and

366 (ii) determines that the public water segment meets the criteria established in

367 Subsection 73-6a-303(2).

368 (4) The board may only make one rule each year that is:

369 (a) authorized by Subsection (1)(d);

370 (b) based on the decisions made under Subsection 73-6a-304(3)(c)(iv); and

371 (c) effective on the day on which the rule made by Wildlife Board establishing the
372 fishing proclamation takes effect.

373 (5) On or before the day on which the Division of Administrative Rules publishes the
374 proposed rule in the Utah State Bulletin, the board shall submit a copy of the proposed rule to
375 the Administrative Rules Review Committee and the Natural Resources, Agriculture, and
376 Environment Interim Committee.

377 Section 11. Section **73-6a-303** is enacted to read:

378 **73-6a-303. Criteria or action for a recommendation by the Recreational Access**
379 **Board.**

380 (1) The board may add a public water segment to the list created by rule under Section
381 73-6a-302 if the public water:

382 (a) has a year-round water depth and flow capable of providing an opportunity to
383 engage in a recreational activity;

384 (b) would provide significant opportunity for the public to engage in a recreational
385 activity;

386 (c) (i) is of a nature that extending the authorization to engage in a recreational activity
387 established in this chapter will not unreasonably impair the bed owner's property rights; and

388 (ii) (A) was closed to public access after May 12, 1989, by the owner of the property on
389 which the public water is located; and

390 (B) (I) was open to public access for at least 20 years prior to the closure described in
391 Subsection (1)(b)(ii)(A); and

392 (II) was freely, notoriously, and continuously used by the public:

393 (Aa) without permission of the owner of the property on which the public water is
394 located; and

395 (Bb) to an extent and under circumstances that the owner of the property on which the
396 public water is located would reasonably recognize the need to protect vulnerable property
397 rights; and

- 398 (d) does not meet the description in Subsection (2)(b).
399 (2) The board may remove a public water segment from the list created by rule under
400 Section 73-6a-302 or recommend the Legislature remove a public water or a segment of a
401 public water from the list provided in Section 73-6a-202 if:
402 (a) the public water does not meet the criteria described in Subsection (1); or
403 (b) as of May 12, 2009:
404 (i) the public water is within the incorporated limits of a municipality;
405 (ii) legal public access, other than provided by this chapter, is not available:
406 (A) on the public water's surface;
407 (B) on the public water's bed; or
408 (C) between the public water's bed and the single family dwellings described in this
409 Subsection (2);
410 (iii) four or more single family dwellings are located within a 150-yard segment of the
411 public water; and
412 (iv) each of the single family dwellings in Subsection (2)(b)(iii) is located 100 feet or
413 less from the bed.
414 Section 12. Section **73-6a-304** is enacted to read:
415 **73-6a-304. Application and procedures.**
416 (1) (a) A person may submit to the board:
417 (i) a recreational access application fee; and
418 (ii) a written, signed application requesting that the board:
419 (A) add a public water segment to the list created by rule under Section 73-6a-302;
420 (B) remove a public water segment from the list created by rule under Section
421 73-6a-302; or
422 (C) recommend the Legislature remove a public water segment from the list provided
423 in Section 73-6a-202.
424 (b) The application shall contain the following information:
425 (i) the applicant's name, address, and phone number;
426 (ii) a detailed description of the one public water segment that is the subject of the
427 application, including the sections, township, and range where the public water is located;
428 (iii) a clear and concise statement identifying the relief sought;

429 (iv) an explanation of the facts and circumstances justifying the relief sought based on
430 the criteria provided in Section 73-6a-303; and

431 (v) the name and current address of each person or entity owning real property abutting
432 or underlying the segment of the public water that is the subject of the application.

433 (2) The recreational access application fee shall consist of:

434 (a) the fee set by the Department of Natural Resources under Section 63-34-5; and

435 (b) the actual cost of notification required by Subsection (3)(a).

436 (3) (a) Upon receipt of an application, the board shall notify by certified mail:

437 (i) each county or municipality in which the segment of the public water is located; and

438 (ii) each person owning real property abutting or underlying the segment of the public
439 water that is the subject of the application.

440 (b) The notice required by Subsection (3)(a) shall state that:

441 (i) the board has received an application; and

442 (ii) the recipient may file with the board a written response within 30 days of receipt of
443 the notice.

444 (c) The board shall schedule a meeting no sooner than 45 days following mailing of the
445 last notice required by this section where the board:

446 (i) shall allow the applicant to orally present facts and arguments to the board in
447 support of the application;

448 (ii) may accept and consider public comment at the meeting in support or opposition to
449 the application;

450 (iii) shall discuss and consider the responses submitted by a person described in
451 Subsection (3)(a); and

452 (iv) shall enter a decision consistent with the requirements of this chapter either to
453 grant, deny, or grant in part the relief requested in the application.

454 Section 13. Section **73-6a-401** is enacted to read:

455 **Part 4. Miscellaneous**

456 **73-6a-401. Applicability of the chapter.**

457 The provisions of this chapter do not affect:

458 (1) the title or ownership of the surface waters, beds, or portage routes of public water;

459 (2) sovereign lands, as defined in Section 65A-1-1; or

460 (3) the rights recognized in Section 23-21-4.

461 Section 14. Section **73-6a-402** is enacted to read:

462 **73-6a-402. Landowner liability.**

463 An owner with a private bed that is subject to the authorization recognized in this
464 chapter has the liability protection afforded by Title 57, Chapter 14, Limitation of Landowner
465 Liability - Public Recreation.

466 Section 15. **Coordinating H.B. 187 with H.B. 153 -- Modifying language.**

467 If this H.B. 187 and H.B. 153, Trespass Law Amendments, both pass, it is the intent of
468 the Legislature that, in preparing the Utah Code database for publication, the Office of
469 Legislative Research and General Counsel shall modify:

470 (1) Subsection 73-6a-102(10)(b) to read:

471 "(b) that is:

472 (i) properly posted, as defined in Section 23-20-14; or

473 (ii) posted as described in:

474 (A) Subsection 76-6-206(2)(b)(iii); or

475 (B) Subsection 76-6-206.3(2)(c).";

476 (2) Subsection 73-6a-102(10)(c) to read:

477 "(c) that is fenced or enclosed as described in:

478 (i) Subsection 76-6-206(2)(b)(ii); or

479 (ii) Subsection 76-6-206.3(2)(b); or";

480 (3) Subsection 73-6a-102(10)(d) to read:

481 "(d) that the owner or a person authorized to act on the owner's behalf has requested a
482 person to leave as provided by:

483 (i) Section 23-20-14;

484 (ii) Subsection 76-6-206(2)(b)(i); or

485 (iii) Subsection 76-6-206.3(2)(a)."; and

486 (4) Subsection 73-6a-201(1) to read:

487 "(1) Except as provided by Subsection (2), a person who touches a private bed is
488 subject to liability for trespass under:

489 (a) Section 23-20-14;

490 (b) Section 76-6-206;

491

(c) Section 76-6-206.3; and

492

(d) a civil action for a claim arising out of touching the private bed."

Fiscal Note**H.B. 187 3rd Sub. (Cherry) - Recreational Use of Public Waters on Private Property**

2009 General Session

State of Utah

State Impact

Enactment of this bill will require an ongoing appropriation of \$15,400 from fee revenues to the Department of Natural Resources for the expenses of the Recreational Access Board. The Department is authorized to establish and collect fees for the applications.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Dedicated Credits	\$0	\$15,400	\$15,400	\$0	\$15,400	\$15,400
Total	\$0	\$15,400	\$15,400	\$0	\$15,400	\$15,400

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
