

**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: \_\_\_\_\_

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**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 in which a person may engage in a recreational activity;
- ▶ creates a Recreational Access Board;
- ▶ establishes membership and duties for the Recreational Access Board; and



26           ▶ establishes procedures for applications to the Recreational Access Board.

27 **Monies Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           This bill coordinates with H.B. 153, Trespass Law Amendments, by modifying  
31 language.

32 **Utah Code Sections Affected:**

33 AMENDS:

34           **4-26-4**, as enacted by Laws of Utah 1979, Chapter 2

35           **63-34-3**, as last amended by Laws of Utah 1996, Chapter 159

36           **63I-1-273**, as last amended by Laws of Utah 2008, Chapters 148, 311 and renumbered  
37 and amended by Laws of Utah 2008, Chapter 382

38 ENACTS:

39           **73-6a-101**, Utah Code Annotated 1953

40           **73-6a-102**, Utah Code Annotated 1953

41           **73-6a-201**, Utah Code Annotated 1953

42           **73-6a-202**, Utah Code Annotated 1953

43           **73-6a-203**, Utah Code Annotated 1953

44           **73-6a-301**, Utah Code Annotated 1953

45           **73-6a-302**, Utah Code Annotated 1953

46           **73-6a-303**, Utah Code Annotated 1953

47           **73-6a-304**, Utah Code Annotated 1953

48           **73-6a-401**, Utah Code Annotated 1953

49           **73-6a-402**, Utah Code Annotated 1953



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

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

53           **4-26-4. Failure to close entrance to enclosure -- Class "C" misdemeanor --**

54 **Damages.**

55           ~~[Any person who willfully]~~

56           (1) A person is guilty of a class C misdemeanor if the person willfully:

- 57           (a) throws down a fence; or
- 58           (b) (i) opens bars or gates into any enclosure [~~other than~~] that is not:
- 59           (A) the person's own enclosure; or [~~into any~~]
- 60           (B) an enclosure jointly owned or occupied by [~~such~~] ~~the~~ person and others[-]; and
- 61           (ii) leaves [it] the enclosure open [~~is guilty of a class "C" misdemeanor, and is~~].
- 62           (2) A person is guilty of a class B misdemeanor if the person willfully cuts a fence.
- 63           (3) A person who performs an act described in this section is also liable in damage for
- 64 any injury sustained by any person as a result of [~~such an~~] the act.

65           Section 2. Section **63-34-3** is amended to read:

66           **63-34-3. Department of Natural Resources created -- Boards, councils, and**  
67 **divisions within department.**

- 68           (1) There is created within state government the Department of Natural Resources.
- 69           (2) The Department of Natural Resources comprises the following boards, councils,
- 70 and divisions:

- 71           (a) Board of Water Resources;
- 72           (b) Forestry, Fire and State Lands Advisory Council;
- 73           (c) Board of Oil, Gas and Mining;
- 74           (d) Board of Parks and Recreation;
- 75           (e) Wildlife Board;
- 76           (f) Riverway Enhancement Advisory Council;
- 77           (g) Board of the Utah Geological Survey;
- 78           (h) Water Development Coordinating Council;
- 79           (i) Division of Water Rights;
- 80           (j) Division of Water Resources;
- 81           (k) Division of Forestry, Fire and State Lands;
- 82           (l) Division of Oil, Gas and Mining;
- 83           (m) Division of Parks and Recreation;
- 84           (n) Division of Wildlife Resources; [~~and~~]
- 85           (o) Utah Geological Survey[-]; and
- 86           

(p) Recreational Access Board, created in Section 73-6a-301.

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

88 **63I-1-273. Repeal dates, Title 73.**

89 (1) Title 73, Chapter 27, State Water Development Commission, is repealed December  
90 31, 2018.

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

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

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

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

96 **Part 1. General Provisions**

97 **73-6a-101. Title.**

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

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

100 **73-6a-102. Definitions.**

101 As used in this chapter:

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

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

104 (b) beneath the ordinary high water mark.

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

106 (3) "Navigable water body" means a natural watercourse that is useful for commerce in  
107 the water body's ordinary condition in the customary modes of trade and travel as of January 4,  
108 1896.

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

110 (a) by covering the soil long enough to ordinarily deprive the soil of terrestrial  
111 vegetation; and

112 (b) at the level where the water body would normally stand during the high water  
113 period when the water body is not affected by a flood or drought.

114 (5) "Permission" is as defined in Section 23-20-14.

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

116 (7) "Private water" means water that a person, with a valid right to use the water, has  
117 reduced to actual, physical possession and exclusive control by placing the water in a  
118 receptacle for storage or conveyance.

- 119 (8) "Property to which access is restricted" means real property:
- 120 (a) that is cultivated land, as defined in Section 23-20-14;
- 121 (b) that is:
- 122 (i) properly posted, as defined in Section 23-20-14; or
- 123 (ii) posted as described in Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
- 124 (c) that is fenced or enclosed as described in Title 76, Chapter 6, Part 2, Burglary and
- 125 Criminal Trespass; or
- 126 (d) that the owner or a person authorized to act on the owner's behalf has requested a
- 127 person to leave as provided by:
- 128 (i) Section 23-20-14; or
- 129 (ii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass.
- 130 (9) (a) "Public water" means water:
- 131 (i) described in Section 73-1-1; and
- 132 (ii) flowing on the surface:
- 133 (A) within a natural channel; or
- 134 (B) ponded in a natural lake or reservoir on a natural channel.
- 135 (b) "Public water" does not include private water.
- 136 (10) "Recreational activity" means an activity that is:
- 137 (a) lawful;
- 138 (b) engaged in:
- 139 (i) for a recreational purpose; or
- 140 (ii) a commercial purpose if a person is guiding or outfitting another person who is
- 141 engaging in an activity listed in Subsection (10)(c) for a recreational purpose; and
- 142 (c) one of the following:
- 143 (i) fishing;
- 144 (ii) swimming; or
- 145 (iii) floating on a vessel.
- 146 (11) (a) "Single family dwelling" means a structure constructed and customarily
- 147 occupied by one or more persons for the principle use as a single unit of residential housing.
- 148 (b) "Single family dwelling" does not include a:
- 149 (i) mobile home;

- 150 (ii) trailer;
- 151 (iii) duplex;
- 152 (iv) multi-unit apartment building;
- 153 (v) commercial structure;
- 154 (vi) outbuilding;
- 155 (vii) barn;
- 156 (viii) shed; or
- 157 (ix) structure with a purpose similar to the structures listed in Subsections (11)(b)(i)
- 158 through (viii), regardless of human occupancy.

159 (12) "Vessel" means a watercraft capable of floating and transporting a person on the  
160 surface of the water, including a:

- 161 (a) boat;
- 162 (b) raft;
- 163 (c) canoe; or
- 164 (d) kayak.

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

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

167 **73-6a-201. Recreational use of public waters over private beds.**

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

- 170 (a) Section 23-20-14;
- 171 (b) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass; and
- 172 (c) a civil action for a claim arising out of touching the private bed.

173 (2) Except as provided by Subsection (5), a person may engage in a recreational  
174 activity:

- 175 (a) on or within a public water:
  - 176 (i) listed in Section 73-6a-202; and
  - 177 (ii) located on or adjacent to property to which access is restricted; and
- 178 (b) by incidentally touching the bed of a public water described in Subsection (2)(a).

179 (3) While engaging in a recreational activity as authorized by Subsection (2), a person  
180 may leave the bed if:

- 181 (a) the person has permission to leave the bed; or
- 182 (b) (i) an obstruction materially interferes with the recreational activity; and
- 183 (ii) the person walks or portages around the obstruction in the most direct and least
- 184 obtrusive manner to re-enter the public water at the nearest safe point above or below the
- 185 obstruction.
- 186 (4) Except as provided by Subsection (3), a person engaging in a recreational activity
- 187 as authorized by Subsection (2), may only enter or exit the surface or bed of a public water:
- 188 (a) on public property as authorized by the entity with jurisdiction over the use of the
- 189 public property;
- 190 (b) on private property that is not property to which access is restricted; or
- 191 (c) on private property if an easement or other lawful access is obtained.
- 192 (5) (a) A person may not fish:
- 193 (a) in a public water:
- 194 (i) listed in Section 73-6a-202; and
- 195 (ii) located on or adjacent to property to which access is restricted; and
- 196 (b) within 500 feet of a single family dwelling that is built before May 12, 2009, and
- 197 qualifies for the residential exemption under Section 59-2-103 if the owner of the single family
- 198 dwelling posts a notice visible from the bed indicating the segment of public water in which
- 199 fishing is prohibited by this section.
- 200 (6) A person may not engage in a recreational activity authorized by Subsection (2) if
- 201 the recreational activity:
- 202 (a) destroys, damages, removes, or alters real or personal property, including a:
- 203 (i) fence, as provided in Section 4-26-4;
- 204 (ii) structure;
- 205 (iii) diversion works;
- 206 (iv) vegetation;
- 207 (v) soil; or
- 208 (vi) rock;
- 209 (b) alters or obstructs water flows;
- 210 (c) involves construction or maintenance of a structure on the bed; or
- 211 (d) is undertaken on:

- 212            (i) horseback;  
213            (ii) a motor vehicle, as defined in Section 41-6a-102; or  
214            (iii) an off-highway vehicle, as defined in Section 41-22-2.  
215            Section 7. Section **73-6a-202** is enacted to read:  
216            **73-6a-202. Public waters available for recreational use.**  
217            As authorized by Section 73-6a-201, a person may engage in a recreational activity on  
218 or in the following public waters:  
219            (1) Bear River from the Idaho state line in Cache County to the Great Salt Lake in Box  
220 Elder County;  
221            (2) Little Bear River from the outlet of Porcupine Reservoir downstream to Highway  
222 30;  
223            (3) Logan River from Highway 30 upstream to the United States Forest Service  
224 boundary line in Logan Canyon;  
225            (4) Price River from the confluence with the White River and Lower Fish Creek  
226 downstream to the State Road 10 bridge;  
227            (5) Jordan River from Utah Lake to the Great Salt Lake;  
228            (6) Duchesne River from the Highway 40 bridge in Myton upstream to the confluence  
229 with the North Fork of the Duchesne River;  
230            (7) Strawberry River from the confluence with the Duchesne River upstream to the  
231 Strawberry Reservoir dam;  
232            (8) Sevier River from the confluence with Asay Creek south of the Highway 89 bridge  
233 downstream to Yuba Reservoir;  
234            (9) Weber River from the confluence with the Gardners Fork in Summit County near  
235 the United States National Forest Service Road 138 downstream to the confluence with the  
236 Ogden River;  
237            (10) Bear River from the Wyoming state line east of Woodruff downstream to the  
238 Wyoming state line northeast of Sage Creek Junction;  
239            (11) Bear River from the Wyoming state line upstream to the confluence with the East  
240 Fork of the Bear River;  
241            (12) Provo River from Utah Lake upstream to the Soapstone Guard Station off State  
242 Road 150 in Wasatch County;

243 (13) Ogden River from the Pineview Reservoir dam to the Great Salt Lake;

244 (14) North Branch and South Branch of the South Fork of the Ogden River from  
245 Pineview Reservoir upstream to Highway 39;

246 (15) North Branch and South Branch of the South Fork of the Ogden River from  
247 Causey Reservoir dam downstream to county road 8700 East;

248 (16) Lower Sevier River from the Yuba dam downstream to Sevier Lake; and

249 (17) White River from the Colorado state line in Uintah County downstream to the  
250 confluence with the Green River.

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

252 **73-6a-203. Penalty.**

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

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

255 **Part 3. Recreational Access Board**

256 **73-6a-301. Recreational Access Board -- Creation -- Membership.**

257 (1) There is created within the Department of Natural Resources the Recreational  
258 Access Board consisting of seven members appointed by the governor with the consent of the  
259 Senate.

260 (2) The board shall consist of members nominated by the following interests:

261 (a) one individual from the governor's office who will act as the board chair;

262 (b) one individual from among nominees of the Department of Agriculture and Food;

263 (c) one individual from among nominees of an organization that promotes the  
264 agricultural industry;

265 (d) one individual from among nominees of an organization that promotes private real  
266 property interests;

267 (e) one individual from among nominees of the Division of Wildlife Resources;

268 (f) one individual from among nominees of the Division of Parks and Recreation; and

269 (g) one individual from among nominees of an organization that promotes sport  
270 fishing.

271 (3) (a) Nominating entities shall nominate at least two, but no more than four,  
272 individuals to the governor for the applicable position or vacancy that occurs on the board.

273 (b) The candidates nominated under Subsection (2) and the members appointed by the

274 governor may not be:

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

276 (ii) a member of the Legislature.

277 (4) (a) Except as required by Subsection (4)(b), the governor shall appoint a member

278 listed in Subsections (2)(b) through (g) to a three-year term.

279 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the

280 time of appointment, adjust the length of terms to ensure that the terms of board members are

281 staggered so at least two members are appointed each year.

282 (c) If a vacancy occurs, the nominating entity shall submit a list of nominees as

283 provided in Subsection (3) to the governor and the governor shall appoint a replacement for the

284 unexpired term.

285 (d) A board member may serve two terms unless the governor determines an additional

286 term is necessary due to exceptional circumstances.

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

288 (b) When conducting a meeting, the chair or vice chair will vote only in the event of a

289 tie among the other members.

290 (c) Five members of the board shall constitute a quorum.

291 (d) A vote of two-thirds of the quorum at a meeting is necessary to take action on

292 behalf of the board.

293 (e) The executive director of the Department of Natural Resources or the executive

294 director's designee shall act as secretary to the board but is not a voting member of the board.

295 (6) (a) The board shall hold a sufficient number of meetings each year to expeditiously

296 conduct its business.

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

298 (c) A meeting may be held at the Salt Lake City office of the Department of Natural

299 Resources or elsewhere in the state as determined by the board.

300 (7) (a) (i) A member who is not a government employee may not receive compensation

301 or benefits for the member's service, but may receive per diem and expenses incurred in the

302 performance of the member's official duties at the rates established by the Division of Finance

303 under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

312 (a) official misconduct; or

313 (b) habitual or willful neglect of duty.

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

315 **73-6a-302. Recreational Access Board -- Authority -- Responsibility.**

316 (1) The board shall determine if an application submitted under Section 73-6a-304  
317 satisfies the criteria listed in Section 73-6a-303.

318 (2) Based on the determination under Subsection (1), the board may recommend the  
319 Legislature include or exclude a public water in the list provided in Section 73-6a-202.

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

321 **73-6a-303. Criteria for a recommendation by the Recreational Access**  
322 **Board.**

323 (1) Upon application, the board may recommend the Legislature include a public water  
324 in the list provided in Section 73-6a-202 if the public water:

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

327 (b) has historically provided significant opportunity for a recreational activity for the  
328 public;

329 (c) is of a nature that extending the authorization provided by this chapter will not  
330 unreasonably impair the bed owner's property rights; and

331 (d) does not meet the description in Subsection (2)(b).

332 (2) Upon application, the board may recommend the Legislature remove a public water  
333 or a segment of a public water from the list provided in Section 73-6a-202 if:

334 (a) the public water does not meet the criteria described in Subsection (1); or

335 (b) as of May 12, 2009:

- 336 (i) the public water is within the incorporated limits of a municipality;
- 337 (ii) legal public access, other than provided by this chapter, is not available on:
- 338 (A) the public water's surface;
- 339 (B) the public water's bed; or
- 340 (C) between the public water's bed and the single family dwellings described in this

341 Subsection (2);

342 (iii) four or more single family dwellings are located within a 150-yard segment of the  
343 public water; and

344 (iv) each of the single family dwellings in Subsection (2)(b)(iii) is located 100 feet or  
345 less from the bed.

346 Section 12. Section **73-6a-304** is enacted to read:

347 **73-6a-304. Application and procedures.**

348 (1) (a) A person may submit a written, signed application with the recreational access  
349 application fee to the board petitioning to either include or exclude one public water segment  
350 on or from the list provided in Section 73-6a-202.

351 (b) The application shall contain the following information:

352 (i) the applicant's name, address, and phone number;

353 (ii) a detailed description of the one public water segment that is the subject of the  
354 application, including the sections, township, and range where the public water is located;

355 (iii) a clear and concise statement identifying the relief sought;

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

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

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

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

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

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

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

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

- 367 (b) The notice required by Subsection (3)(a) shall state that:  
368 (i) the board has received an application; and  
369 (ii) the recipient may file with the board a written response within 30 days of receipt of  
370 the notice.  
371 (c) The board shall schedule a meeting no sooner than 45 days following mailing of the  
372 last notice required by this section where the board:  
373 (i) shall allow the applicant to orally present facts and arguments to the board in  
374 support of the application;  
375 (ii) may accept and consider public comment at the meeting in support or opposition to  
376 the application;  
377 (iii) shall discuss and consider the responses submitted by a person described in  
378 Subsection (3)(a); and  
379 (iv) shall enter a decision consistent with the requirements of this chapter either to  
380 grant, deny, or grant in part the relief requested in the application.

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

382 **Part 4. Miscellaneous**

383 **73-6a-401. Applicability of the chapter.**

384 The provisions of this chapter do not affect:

- 385 (1) the title or ownership of the surface waters, beds, or portage routes of public water;  
386 (2) sovereign lands, as defined in Section 65A-1-1; or  
387 (3) the rights recognized in Section 23-21-4.

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

389 **73-6a-402. Landowner liability.**

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

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

394 If this H.B. 187 and H.B. 153, Trespass Law Amendments, both pass, it is the intent of  
395 the Legislature that, in preparing the Utah Code database for publication, the Office of  
396 Legislative Research and General Counsel shall replace the references in:

- 397 (1) Subsection 73-6a-102(8)(b)(ii) from "Title 76, Chapter 6, Part 2, Burglary and

398 Criminal Trespass" to ": (A) Subsection 76-6-206(2)(b)(iii); or (B) Subsection  
399 76-6-206.3(2)(c)";

400 (2) Subsection 73-6a-102(8)(c) from "Title 76, Chapter 6, Part 2, Burglary and

401 Criminal Trespass" to ": (A) Subsection 76-6-206(2)(b)(ii); or (B) Subsection

402 76-6-206.3(2)(b)";

403 (3) in Subsection 73-6a-102(8)(d)(ii) from "Title 76, Chapter 6, Part 2, Burglary and

404 Criminal Trespass" to ": (A) Subsection 76-6-206(2)(b)(i); or (B) Subsection

405 76-6-206.3(2)(a)"; and

406 (4) Subsection 73-6a-201(1)(b) from "Title 76, Chapter 6, Part 2, Burglary and

407 Criminal Trespass" to "Section 76-6-206 or Section 76-6-206.3".

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**Fiscal Note****H.B. 187 1st Sub. (Buff) - Recreational Use of Public Waters on Private Property**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will require an ongoing appropriation of \$2,900 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	\$2,900	\$2,900	\$0	\$2,900	\$2,900
<b>Total</b>	<b>\$0</b>	<b>\$2,900</b>	<b>\$2,900</b>	<b>\$0</b>	<b>\$2,900</b>	<b>\$2,900</b>

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**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.

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