

**RECREATIONAL USE OF PRIVATELY OWNED  
STREAM BEDS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill recognizes public recreational use of privately owned beds below public waters.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows public recreational use of private beds in connection with recreational activities using public waters;
- ▶ addresses the scope of the public's right to use private beds;
- ▶ prohibits certain conduct in connection with the use of a private bed;
- ▶ provides a criminal penalty for a violation of provisions concerning public recreational use of a private bed; and
- ▶ provides liability protections for the owner of a private bed.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:



- 28           **73-6a-101**, Utah Code Annotated 1953
- 29           **73-6a-102**, Utah Code Annotated 1953
- 30           **73-6a-201**, Utah Code Annotated 1953
- 31           **73-6a-202**, Utah Code Annotated 1953
- 32           **73-6a-301**, Utah Code Annotated 1953
- 33           **73-6a-302**, Utah Code Annotated 1953



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

36           Section 1. Section **73-6a-101** is enacted to read:

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

38   **Part 1. General Provisions**

39           **73-6a-101. Title.**

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

41           Section 2. Section **73-6a-102** is enacted to read:

42           **73-6a-102. Definitions.**

43           As used in this chapter:

44           (1) "Permission" is as defined in Section 23-20-14.

45           (2) "Private bed" means a privately owned bed below a public water in the area actually  
46 wetted by the public water.

47           (3) "Property to which access is restricted" means real property:

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

49           (b) that is:

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

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

52           (iii) posted as described in Subsection 76-6-206.3(2)(c);

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

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

55           (ii) Subsection 76-6-206.3(2)(b); and

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

58           (i) Section 23-20-14;

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

60 (iii) Subsection 76-6-206.3(2)(a).

61 (4) (a) "Public water" means water:

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

63 (ii) flowing on the surface:

64 (A) within a natural or realigned channel; or

65 (B) ponded in a natural lake, pond, or reservoir on a natural or realigned channel.

66 (b) "Public water" does not include:

67 (i) water flowing or collecting on private property in a manmade:

68 (A) irrigation canal;

69 (B) irrigation ditch; or

70 (C) impoundment or reservoir constructed outside of a natural or realigned channel; or

71 (ii) water in a public or private aquaculture facility, private fish pond, or fee fishing  
72 facility.

73 (5) "Recreational activity" means an activity requiring the use of the water that is:

74 (a) lawful;

75 (b) engaged in for a recreational purpose; and

76 (c) consistent with the amount of water actually present at the time the activity occurs.

77 Section 3. Section **73-6a-201** is enacted to read:

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

79 **73-6a-201. Recreational use of public waters over private beds.**

80 (1) Except as provided by Subsections (2) and (7), a person who touches a private bed  
81 without permission is subject to liability for trespass under:

82 (a) Section 23-20-14;

83 (b) Section 76-6-206;

84 (c) Section 76-6-206.3; and

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

86 (2) A person engaged in a recreational activity in a public water that contains water at  
87 the time of the recreational activity:

88 (a) may touch a private bed below the public water; and

89 (b) may not touch a public or private bed located in a public or private aquaculture

90 facility, private fish pond, or fee fishing facility.

91 (3) While engaging in a recreational activity as authorized by Subsection (2), a person  
92 may enter private property from the area described in Subsection (2) only if:

93 (a) the person has permission to enter the private property; or

94 (b) (i) a manmade obstruction materially interferes with the recreational activity; and

95 (ii) the person walks or portages on private property around the manmade obstruction  
96 in the most direct and least obtrusive manner to re-enter the public water at the nearest safe  
97 point above or below the manmade obstruction.

98 (4) The owner of a private bed may place a fence across the public water.

99 (5) Except as provided by Subsection (3), a person engaging in a recreational activity  
100 on a public water over a private bed, may only enter or exit the public water:

101 (a) on public property, including highway rights-of-way, other public water, or other  
102 public property, unless prohibited by the entity with jurisdiction over the use of the public  
103 property; or

104 (b) on private property with permission.

105 (6) A person may not engage in a recreational activity on a public water if the  
106 recreational activity:

107 (a) destroys, damages, removes, or alters real or personal property, including:

108 (i) a fence, as provided in Section 4-26-4;

109 (ii) a structure;

110 (iii) a diversion works; or

111 (iv) vegetation, soil, or rock other than incidental to ordinary use;

112 (b) alters or obstructs water flows;

113 (c) involves construction or maintenance of a structure on the bed;

114 (d) is undertaken on:

115 (i) horseback;

116 (ii) a motor vehicle, as defined in Section 41-6a-102;

117 (iii) an off-highway vehicle, as defined in Section 41-22-2; or

118 (iv) a non-motorized wheeled vehicle; or

119 (e) occurs on a public water containing a natural obstacle that would require the person  
120 to walk or portage over private property to avoid the natural obstacle if:

121 (i) the private property is property to which access is restricted; or  
 122 (ii) the person does not have permission to walk or portage over the private property.  
 123 (7) (a) Notwithstanding the access described in Subsection (2), nothing in this chapter  
 124 prohibits a person from acquiring or restricting access to a greater or lesser extent than  
 125 provided for in Subsection (2) under another provision of law.  
 126 (b) Notwithstanding Subsection (7)(a), the public has no right to an easement for  
 127 recreational activity on a private bed solely on the basis of the public's ownership of the public  
 128 waters.

129 Section 4. Section **73-6a-202** is enacted to read:

130 **73-6a-202. Penalty.**

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

132 Section 5. Section **73-6a-301** is enacted to read:

133 **Part 3. Miscellaneous**

134 **73-6a-301. Applicability of the chapter.**

135 The provisions of this chapter do not affect:

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

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

140 **73-6a-302. Landowner liability.**

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

**Legislative Review Note**  
as of 2-2-10 8:28 AM

**Office of Legislative Research and General Counsel**

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**H.B. 290 - Recreational Use of Privately Owned Stream Beds**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enacting this bill will require \$7,900 from the General Fund and \$1,400 from the restricted fund to Courts. The bill will generate \$6,200 to the General Fund and \$1,200 to the restricted fund.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$7,900	\$7,900	\$0	\$6,200	\$6,200
Restricted Funds	\$0	\$1,400	\$1,400	\$0	\$1,200	\$1,200
<b>Total</b>	<b>\$0</b>	<b>\$9,300</b>	<b>\$9,300</b>	<b>\$0</b>	<b>\$7,400</b>	<b>\$7,400</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill may impact local justice courts.

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