

RECREATIONAL USE OF PUBLIC WATERS

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

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

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

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **4-26-4**, as enacted by Laws of Utah 1979, Chapter 2

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

35 **63I-1-273**, as last amended by Laws of Utah 2008, Chapters 148, 311 and renumbered
36 and amended by Laws of Utah 2008, Chapter 382

37 ENACTS:

38 **73-6a-101**, Utah Code Annotated 1953

39 **73-6a-102**, Utah Code Annotated 1953

40 **73-6a-201**, Utah Code Annotated 1953

41 **73-6a-202**, Utah Code Annotated 1953

42 **73-6a-203**, Utah Code Annotated 1953

43 **73-6a-301**, Utah Code Annotated 1953

44 **73-6a-302**, Utah Code Annotated 1953

45 **73-6a-303**, Utah Code Annotated 1953

46 **73-6a-304**, Utah Code Annotated 1953

47 **73-6a-401**, Utah Code Annotated 1953

48 **73-6a-402**, Utah Code Annotated 1953



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

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

52 **4-26-4. Failure to close entrance to enclosure -- Class "C" misdemeanor --**

53 **Damages.**

54 [~~Any person who willfully~~]

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

56 (a) throws down a fence; or

57 (b) (i) opens bars or gates into any enclosure [~~other than~~] that is not:

58 (A) the person's own enclosure; or [~~into any~~]

59 (B) an enclosure jointly owned or occupied by ~~[such]~~ the person and others[-]; and
60 (ii) leaves [it] the enclosure open ~~[is guilty of a class "C" misdemeanor, and is].~~
61 (2) A person is guilty of a class B misdemeanor if the person willfully cuts a fence.
62 (3) A person who performs an act described in this section is also liable in damage for
63 any injury sustained by any person as a result of ~~[such an]~~ the act.

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

65 **63-34-3. Department of Natural Resources created -- Boards, councils, and**
66 **divisions within department.**

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

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

- 70 (a) Board of Water Resources;
- 71 (b) Forestry, Fire and State Lands Advisory Council;
- 72 (c) Board of Oil, Gas and Mining;
- 73 (d) Board of Parks and Recreation;
- 74 (e) Wildlife Board;
- 75 (f) Riverway Enhancement Advisory Council;
- 76 (g) Board of the Utah Geological Survey;
- 77 (h) Water Development Coordinating Council;
- 78 (i) Division of Water Rights;
- 79 (j) Division of Water Resources;
- 80 (k) Division of Forestry, Fire and State Lands;
- 81 (l) Division of Oil, Gas and Mining;
- 82 (m) Division of Parks and Recreation;
- 83 (n) Division of Wildlife Resources; ~~[and]~~
- 84 (o) Utah Geological Survey[-]; and
- 85 (p) Recreational Access Board, created in Section 73-6a-301.

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

87 **63I-1-273. Repeal dates, Title 73.**

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

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

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

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

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

95 **Part 1. General Provisions**

96 **73-6a-101. Title.**

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

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

99 **73-6a-102. Definitions.**

100 As used in this chapter:

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

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

103 (b) beneath the ordinary high water mark.

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

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

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

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

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

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

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

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

118 (8) "Property to which access is restricted" means real property:

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

120 (b) that is:

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

- 152 (v) commercial structure;
- 153 (vi) outbuilding;
- 154 (vii) barn;
- 155 (viii) shed; or
- 156 (ix) structure with a purpose similar to the structures listed in Subsections (11)(b)(i)
- 157 through (viii), regardless of human occupancy.

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

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

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

Part 2. Recreational Use of Private Beds

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

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

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

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

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

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

- 180 (a) the person has permission to leave the bed; or
- 181 (b) (i) an obstruction materially interferes with the recreational activity; and
- 182 (ii) the person walks or portages around the obstruction in the most direct and least

183 obtrusive manner to re-enter the public water at the nearest safe point above or below the
184 obstruction.

185 (4) Except as provided by Subsection (3), a person engaging in a recreational activity
186 as authorized by Subsection (2), may only enter or exit the surface or bed of a public water:

187 (a) on public property as authorized by the entity with jurisdiction over the use of the
188 public property;

189 (b) on private property that is not property to which access is restricted; or

190 (c) on private property if an easement or other lawful access is obtained.

191 (5) (a) A person may not fish:

192 (a) in a public water:

193 (i) listed in Section 73-6a-202; and

194 (ii) located on or adjacent to property to which access is restricted; and

195 (b) within 500 feet of a single family dwelling that is built before May 12, 2009, and
196 qualifies for the residential exemption under Section 59-2-103 if the owner of the single family
197 dwelling posts a notice visible from the bed indicating the segment of public water in which
198 fishing is prohibited by this section.

199 (6) A person may not engage in a recreational activity authorized by Subsection (2) if
200 the recreational activity:

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

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

203 (ii) structure;

204 (iii) diversion works;

205 (iv) vegetation;

206 (v) soil; or

207 (vi) rock;

208 (b) alters or obstructs water flows;

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

210 (d) is undertaken on:

211 (i) horseback;

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

213 (iii) an off-highway vehicle, as defined in Section 41-22-2.

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

215 **73-6a-202. Public waters available for recreational use.**

216 As authorized by Section 73-6a-201, a person may engage in a recreational activity on
217 or in the following public waters:

218 (1) Bear River from the Idaho state line in Cache County to the Great Salt Lake in Box
219 Elder County;

220 (2) Little Bear River from the outlet of Porcupine Reservoir downstream to Highway
221 30;

222 (3) Logan River from Highway 30 upstream to the United States Forest Service
223 boundary line in Logan Canyon;

224 (4) Price River from the confluence with the White River and Lower Fish Creek
225 downstream to the State Road 10 bridge;

226 (5) Jordan River from Utah Lake to the Great Salt Lake;

227 (6) Duchesne River from the Highway 40 bridge in Myton upstream to the confluence
228 with the North Fork of the Duchesne River;

229 (7) Strawberry River from the confluence with the Duchesne River upstream to the
230 Strawberry Reservoir dam;

231 (8) Sevier River from the confluence with Asay Creek south of the Highway 89 bridge
232 downstream to Yuba Reservoir;

233 (9) Weber River from the confluence with the Gardners Fork in Summit County near
234 the United States National Forest Service Road 138 downstream to the confluence with the
235 Ogden River;

236 (10) Bear River from the Wyoming state line east of Woodruff downstream to the
237 Wyoming state line northeast of Sage Creek Junction;

238 (11) Bear River from the Wyoming state line upstream to the confluence with the East
239 Fork of the Bear River;

240 (12) Provo River from Utah Lake upstream to the Soapstone Guard Station off State
241 Road 150 in Wasatch County;

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

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

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

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

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

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

251 **73-6a-203. Penalty.**

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

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

254 **Part 3. Recreational Access Board**

255 **73-6a-301. Recreational Access Board -- Creation -- Membership.**

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

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

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

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

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

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

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

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

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

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

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

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

275 (ii) a member of the Legislature.

276 (4) (a) Except as required by Subsection (4)(b), the governor shall appoint a member
277 listed in Subsections (2)(b) through (g) to a three-year term.

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

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

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

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

287 (b) When conducting a meeting, the chair or vice chair will vote only in the event of a
288 tie among the other members.

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

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

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

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

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

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

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

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

304 (b) (i) A state government officer and employee member who does not receive salary,
305 per diem, or expenses from the agency the member represents for the member's service may
306 receive per diem and expenses incurred in the performance of the member's official duties at

307 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

311 (a) official misconduct; or

312 (b) habitual or willful neglect of duty.

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

314 **73-6a-302. Recreational Access Board -- Authority -- Responsibility.**

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

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

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

320 **73-6a-303. Criteria for a recommendation by the Recreational Access**

321 **Board.**

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

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

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

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

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

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

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

334 (b) as of May 12, 2009:

335 (i) the public water is within the incorporated limits of a municipality;

336 (ii) legal public access, other than provided by this chapter, is not available on the
337 surface or bed of the public water;

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

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

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

343 **73-6a-304. Application and procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

378 **Part 4. Miscellaneous**

379 **73-6a-401. Applicability of the chapter.**

380 The provisions of this chapter do not affect:

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

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

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

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

385 **73-6a-402. Landowner liability.**

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

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

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

393 (1) Subsection 73-6a-102(8)(b)(ii) from "Title 76, Chapter 6, Part 2, Burglary and
394 Criminal Trespass" to ": (A) Subsection 76-6-206(2)(b)(iii); or (B) Subsection
395 76-6-206.3(2)(c)";

396 (2) Subsection 73-6a-102(8)(c) from "Title 76, Chapter 6, Part 2, Burglary and
397 Criminal Trespass" to ": (A) Subsection 76-6-206(2)(b)(ii); or (B) Subsection
398 76-6-206.3(2)(b)";

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

400 Criminal Trespass" to "(A) Subsection 76-6-206(2)(b)(i); or (B) Subsection
401 76-6-206.3(2)(a)"; and
402 (4) Subsection 73-6a-201(1)(b) from "Title 76, Chapter 6, Part 2, Burglary and
403 Criminal Trespass" to "Section 76-6-206 or Section 76-6-206.3".

Legislative Review Note
as of 2-9-09 6:02 PM

Office of Legislative Research and General Counsel