

2nd Sub. H.B. 187

RECREATIONAL USE OF PUBLIC WATERS ON PRIVATE PROPERTY

HOUSE FLOOR AMENDMENTS

AMENDMENT 4

MARCH 3, 2009 2:42 PM

Representative **Lorie D. Fowlke** proposes the following amendments:

1. *Page 1, Lines 19 through 20:*

19 ▶ authorizes a person to engage in certain recreational activities in ~~{specified}~~ public
20 waters; and

2. *Page 1, Line 22 through Page 2, Line 27:*

22 ~~{specified}~~ public waters ~~{;}~~ ≡
23 ▶ ~~{specifies the public waters on certain private property in which a person may engage~~
24 ~~in a recreational activity;~~
25 ~~—————▶—————creates a Recreational Access Board;~~
26 ~~—————▶—————establishes membership and duties for the Recreational Access Board; and~~
27 ~~—————▶—————establishes procedures for applications to the Recreational Access Board.}~~

3. *Page 2, Lines 36 through 37:*

36 ~~{63-34-3, as last amended by Laws of Utah 1996, Chapter 159~~
37 ~~—————63I-1-273, as last amended by Laws of Utah 2008, Chapters 148, 311 and renumbered }~~

4. *Page 2, Line 43:*

43 ~~{73-6a-202, Utah Code Annotated 1953 }~~

5. *Page 2, Lines 47 through 50:*

47 ~~{73-6a-303, Utah Code Annotated 1953~~
48 ~~—————73-6a-304, Utah Code Annotated 1953~~
49 ~~—————73-6a-401, Utah Code Annotated 1953~~
50 ~~—————73-6a-402, Utah Code Annotated 1953 }~~

6. *Page 3, Line 66 through Page 4, Line 95:*

66 ~~{Section 2. Section 63-34-3 is amended to read:~~
67 ~~—————63-34-3. Department of Natural Resources created -- Boards, councils, and~~
68 ~~divisions within department.~~
69 ~~—————(1) There is created within state government the Department of Natural Resources;~~
70 ~~—————(2) The Department of Natural Resources comprises the following boards, councils,~~

71 and divisions:
72 — (a) Board of Water Resources;
73 — (b) Forestry, Fire and State Lands Advisory Council;
74 — (c) Board of Oil, Gas and Mining;
75 — (d) Board of Parks and Recreation;
76 — (e) Wildlife Board;
77 — (f) Riverway Enhancement Advisory Council;
78 — (g) Board of the Utah Geological Survey;
79 — (h) Water Development Coordinating Council;
80 — (i) Division of Water Rights;
81 — (j) Division of Water Resources;
82 — (k) Division of Forestry, Fire and State Lands;
83 — (l) Division of Oil, Gas and Mining;
84 — (m) Division of Parks and Recreation;
85 — (n) Division of Wildlife Resources; [and]
86 — (o) Utah Geological Survey[.]; and
87 — (p) Recreational Access Board, created in Section 73-6a-301.
88 — Section 3. Section 63I-1-273 is amended to read:
89 — 63I-1-273. Repeal dates, Title 73.
90 — (1) Title 73, Chapter 27, State Water Development Commission, is repealed December
91 31, 2018.
92 — (2) The instream flow water right for trout habitat established in Subsection 73-3-30(3)
93 is repealed December 31, 2018.
94 — (3) Title 73, Chapter 6a, Part 3, Recreational Access Board, is repealed July 1, 2015. }
95 Section { -4 } 2 . Section 73-6a-101 is enacted to read:

7. Page 4, Line 100:

100 Section { -5 } 3 . Section 73-6a-102 is enacted to read:

8. Page 4, Lines 103 through 117:

103 (1) "Bed" means an area that is { -; }
104 — (a) adjacent within five feet of a water body; and
105 — (b) } beneath the ordinary high water mark.
106 { (2) "Board" means the Recreational Access Board created in Section 73-6a-301. }
107 { (3) "Indian land" means land that is:
108 — (a) held in trust by the United States for an Indian tribe or a member of an Indian tribe;
109 or
110 — (b) owned by an Indian or Indian tribe and is subject to restrictions against alienation.
111 — (4) "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized

112 group or community that is recognized as eligible for the special programs and services
113 provided by the United States to Indians because of their status as Indians.}
114 ~~{(5)}~~ (2) "Navigable water body" means a natural watercourse that is useful for commerce in
115 the water body's ordinary condition {in the customary modes of trade and travel as of January 4,
116 1896.}
117 ~~{(6)}~~ (3) "Ordinary high water mark" means the line that a water body impresses on the soil:

9. Page 5, Lines 122 through 124:

122 ~~{(7)}~~ (4) "Permission" is as defined in Section 23-20-14.
123 ~~{(8)}~~ (5) "Private bed" means the bed of a water body that is not a navigable water body.
124 ~~{(9)}~~ (6) "Private water" means water that a person, with a valid right to use the water, has

10. Page 5, Line 127:

127 ~~{(10)}~~ (7) "Property to which access is restricted" means real property:

11. Page 5, Line 137:

137 ~~{(11)}~~ (8) (a) "Public water" means water:

12. Page 5, Line 143:

143 ~~{(12)}~~ (9) "Recreational activity" means an activity that is:

13. Page 5, Line 148:

148 engaging in an activity listed in Subsection ~~{(12)}~~ (9) (c) for a recreational purpose; and

14. Page 6, Lines 153 through 166:

153 ~~{(13)(a)}~~ "Single family dwelling" means a structure constructed and customarily
154 occupied by one or more persons for the principle use as a single unit of residential housing.
155 — (b) "Single family dwelling" does not include a:
156 — (i) mobile home;
157 — (ii) trailer;
158 — (iii) duplex;
159 — (iv) multi-unit apartment building;
160 — (v) commercial structure;
161 — (vi) outbuilding;
162 — (vii) barn;
163 — (viii) shed; or
164 — (ix) structure with a purpose similar to the structures listed in Subsections (13)(b)(i)

165 ~~through (viii), regardless of human occupancy.~~}

166 {~~(14)~~} (10) "Vessel" means a watercraft capable of floating and transporting a person on the

15. Page 6, Line 172:

172 Section {~~6~~} (4) . Section 73-6a-201 is enacted to read:

16. Page 7, Lines 182 through 184:

182 (a) on or within a public water {~~;~~

183 ~~— (i) listed in Section 73-6a-202; and~~

184 ~~— (ii)}~~ located on or adjacent to property to which access is restricted; and

17. Page 8, Line 214 through Page 9, Line 273:

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, except where the public water flows over Indian land:~~

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 United~~
228 ~~States Forest Service boundary line the North Fork and West 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) South Fork of the Ogden River from Pineview Reservoir upstream to the Causey~~
244 ~~Reservoir dam;~~
245 ~~—— (15) Lower Sevier River from the Yuba dam downstream to Sevier Lake;~~
246 ~~—— (16) White River from the Colorado state line in Uintah County downstream to the~~
247 ~~confluence with the Green River;~~
248 ~~—— (17) Blacksmith Fork River from the State Road 165 bridge upstream to Lions Hollow;~~
249 ~~—— (18) Logan River from the Red Banks Campground to the Idaho state line;~~
250 ~~—— (19) Carrant Creek from the confluence with the Strawberry River upstream to United~~
251 ~~States Forest Service boundary line;~~
252 ~~—— (20) Lake Fork River upstream from the Highway 87 bridge to United States Forest~~
253 ~~Service boundary line;~~
254 ~~—— (21) Diamond Fork from the confluence with Spanish Fork River upstream to United~~
255 ~~States Forest Service boundary line;~~
256 ~~—— (22) East Fork of the Sevier River from the Garfield County and Kane County line to~~
257 ~~the confluence with the Sevier River;~~
258 ~~—— (23) East Canyon Creek from the confluence with the Weber River upstream to the~~
259 ~~Interstate 80 bridge;~~
260 ~~—— (24) Lost Creek from the Lost Creek Reservoir dam downstream to the confluence~~
261 ~~with the Weber River;~~
262 ~~—— (25) Thistle Creek from the confluence with Spanish Fork River upstream to the~~
263 ~~confluence with Nebo Creek;~~
264 ~~—— (26) Beaver River from Minersville Reservoir downstream to the State Road 130~~
265 ~~bridge in Minersville;~~
266 ~~—— (27) Spanish Fork River from Utah Lake to the confluence with Thistle Creek at the~~
267 ~~Thistle mudslide dam;~~
268 ~~—— (28) Fremont River from the State Road 24 bridge East of Loa to Capitol Reef National~~
269 ~~Park;~~
270 ~~—— (29) Huntington Creek from the United States Forest Service boundary line in~~
271 ~~Huntington Canyon downstream to the State Road 10 bridge; and~~
272 ~~—— (30) Lower Fish Creek from Scofield Dam to the confluence with the White River. }~~

273 Section { ~~8~~ } (5) . Section 73-6a-203 is enacted to read:

18. Page 10, Line 276 through Page 14, Line 419:

276 { ~~Section 9. Section 73-6a-301 is enacted to read:~~
277 ~~————— Part 3. Recreational Access Board~~
278 ~~—— 73-6a-301. Recreational Access Board -- Creation -- Membership.~~

279 ~~—— (1) There is created within the Department of Natural Resources the Recreational~~
280 ~~Access Board consisting of nine members appointed by the governor with the consent of the~~
281 ~~Senate;~~
282 ~~—— (2) The board shall consist of:~~
283 ~~—— (a) one member of the general public; and~~
284 ~~—— (b) members nominated by the following interests:~~
285 ~~—— (i) one individual from among nominees of the Department of Agriculture and Food;~~
286 ~~—— (ii) one individual from among nominees of an organization that promotes the~~
287 ~~agricultural industry;~~
288 ~~—— (iii) one individual from among nominees of an organization that promotes private real~~
289 ~~property interests;~~
290 ~~—— (iv) one individual from among nominees of the Division of Wildlife Resources;~~
291 ~~—— (v) one individual who promotes floating on a vessel from among nominees of the~~
292 ~~Division of Parks and Recreation;~~
293 ~~—— (vi) one individual from among nominees of an organization that promotes sport~~
294 ~~fishing;~~
295 ~~—— (vii) one individual from among nominees of an organization that promotes~~
296 ~~conservation districts; and~~
297 ~~—— (viii) one individual from among nominees of an organization that promotes the~~
298 ~~industry of outfitting a person to fish or float on a vessel.~~
299 ~~—— (3) (a) Each nominating entity shall nominate at least two, but no more than four,~~
300 ~~individuals to the governor for the applicable position or vacancy that occurs on the board.~~
301 ~~—— (b) The candidates nominated under Subsection (2) and the members appointed by the~~
302 ~~governor may not be:~~
303 ~~—— (i) an employee of the nominating entity; or~~
304 ~~—— (ii) a member of the Legislature.~~
305 ~~—— (4) (a) Except as required by Subsection (4)(b), the governor shall appoint a member to~~
306 ~~a three-year term.~~
307 ~~—— (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the~~
308 ~~time of appointment, adjust the length of terms to ensure that the terms of board members are~~
309 ~~staggered so at least three members are appointed each year.~~
310 ~~—— (c) If a vacancy occurs, the nominating entity shall submit a list of nominees as~~
311 ~~provided in Subsection (3) to the governor and the governor shall appoint a replacement for the~~
312 ~~unexpired term.~~
313 ~~—— (d) A board member may serve two terms unless the governor determines an additional~~
314 ~~term is necessary due to exceptional circumstances.~~
315 ~~—— (5) (a) The board shall elect a chair and vice chair from its membership.~~
316 ~~—— (b) Five members of the board shall constitute a quorum.~~
317 ~~—— (c) A vote of the majority of the quorum at a meeting is necessary to take action on~~

318 behalf of the board:
319 —— (d) The executive director of the Department of Natural Resources or the executive
320 director's designee shall act as secretary to the board but is not a voting member of the board:
321 —— (6) (a) The board shall hold a sufficient number of meetings each year to expeditiously
322 conduct its business:
323 —— (b) A meeting may be called by the chair upon five days notice to the board members:
324 —— (c) A meeting may be held at the Salt Lake City office of the Department of Natural
325 Resources or elsewhere in the state as determined by the board:
326 —— (7) (a) (i) A member who is not a government employee may not receive compensation
327 or benefits for the member's service, but may receive per diem and expenses incurred in the
328 performance of the member's official duties at the rates established by the Division of Finance
329 under Sections 63A-3-106 and 63A-3-107:
330 —— (ii) A member may decline to receive per diem and expenses for the member's service:
331 —— (b) (i) A state government officer and employee member who does not receive salary,
332 per diem, or expenses from the agency the member represents for the member's service may
333 receive per diem and expenses incurred in the performance of the member's official duties at
334 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107:
335 —— (ii) A state government officer and employee member may decline to receive per diem
336 and expenses for the member's service:
337 —— (8) The governor may remove at any time a member for:
338 —— (a) official misconduct; or
339 —— (b) habitual or willful neglect of duty:
340 —— Section 10. Section 73-6a-302 is enacted to read:
341 —— ~~73-6a-302. Recreational Access Board -- Authority -- Responsibility.~~
342 —— (1) The board shall determine if an application submitted under Section 73-6a-304
343 satisfies the criteria listed in Section 73-6a-303:
344 —— (2) Based on the determination under Subsection (1), the board may recommend the
345 Legislature include or exclude a public water in the list provided in Section 73-6a-202:
346 —— Section 11. Section 73-6a-303 is enacted to read:
347 —— ~~73-6a-303. Criteria for a recommendation by the Recreational Access~~
348 Board:
349 —— (1) Upon application, the board may recommend the Legislature include a public water
350 in the list provided in Section 73-6a-202 if the public water:
351 —— (a) has a year-round water depth and flow capable of providing an opportunity to
352 engage in a recreational activity;
353 —— (b) (i) has historically provided and continues to provide significant opportunity for a
354 recreational activity for the public; or
355 —— (ii) (A) was closed to public access after May 12, 1989, by the owner of the property on
356 which the public water is located; and

357 ~~— (B) (I) was open to public access for at least 20 years prior to the closure described in~~
358 ~~Subsection (1)(b)(ii)(A); and~~
359 ~~— (H) was freely, notoriously, and continuously used by the public;~~
360 ~~— (Aa) without permission of the owner of the property on which the public water is~~
361 ~~located; and~~
362 ~~— (Bb) to an extent and under circumstances that the owner of the property on which the~~
363 ~~public water is located would reasonably recognize the need to protect vulnerable property~~
364 ~~rights;~~
365 ~~— (c) is of a nature that extending the authorization provided by this chapter will not~~
366 ~~unreasonably impair the bed owner's property rights; and~~
367 ~~— (d) does not meet the description in Subsection (2)(b);~~
368 ~~— (2) Upon application, the board may recommend the Legislature remove a public water~~
369 ~~or a segment of a public water from the list provided in Section 73-6a-202 if:~~
370 ~~— (a) the public water does not meet the criteria described in Subsection (1); or~~
371 ~~— (b) as of May 12, 2009:~~
372 ~~— (i) the public water is within the incorporated limits of a municipality;~~
373 ~~— (ii) legal public access, other than provided by this chapter, is not available on:~~
374 ~~— (A) the public water's surface;~~
375 ~~— (B) the public water's bed; or~~
376 ~~— (C) between the public water's bed and the single family dwellings described in this~~
377 ~~Subsection (2);~~
378 ~~— (iii) four or more single family dwellings are located within a 150-yard segment of the~~
379 ~~public water; and~~
380 ~~— (iv) each of the single family dwellings in Subsection (2)(b)(iii) is located 100 feet or~~
381 ~~less from the bed. }~~
382 ~~{ Section 12. Section 73-6a-304 is enacted to read:~~
383 ~~— 73-6a-304. Application and procedures:~~
384 ~~— (1) (a) A person may submit a written, signed application with the recreational access~~
385 ~~application fee to the board petitioning to either include or exclude one public water segment~~
386 ~~on or from the list provided in Section 73-6a-202.~~
387 ~~— (b) The application shall contain the following information:~~
388 ~~— (i) the applicant's name, address, and phone number;~~
389 ~~— (ii) a detailed description of the one public water segment that is the subject of the~~
390 ~~application, including the sections, township, and range where the public water is located;~~
391 ~~— (iii) a clear and concise statement identifying the relief sought;~~
392 ~~— (iv) an explanation of the facts and circumstances justifying the relief sought based on~~
393 ~~the criteria provided in Section 73-6a-303; and~~
394 ~~— (v) the name and current address of each person or entity owning real property abutting~~
395 ~~or underlying the segment of the public water that is the subject of the application.~~

396 ~~— (2) The recreational access application fee shall consist of:~~
397 ~~— (a) the fee set by the Department of Natural Resources under Section 63-34-5; and~~
398 ~~— (b) the actual cost of notification required by Subsection (3)(a):~~
399 ~~— (3) (a) Upon receipt of an application, the board shall notify by certified mail:~~
400 ~~— (i) each county or municipality in which the segment of the public water is located; and~~
401 ~~— (ii) each person owning real property abutting or underlying the segment of the public~~
402 ~~water that is the subject of the application:~~
403 ~~— (b) The notice required by Subsection (3)(a) shall state that:~~
404 ~~— (i) the board has received an application; and~~
405 ~~— (ii) the recipient may file with the board a written response within 30 days of receipt of~~
406 ~~the notice:~~
407 ~~— (c) The board shall schedule a meeting no sooner than 45 days following mailing of the~~
408 ~~last notice required by this section where the board:~~
409 ~~— (i) shall allow the applicant to orally present facts and arguments to the board in~~
410 ~~support of the application;~~
411 ~~— (ii) may accept and consider public comment at the meeting in support or opposition to~~
412 ~~the application;~~
413 ~~— (iii) shall discuss and consider the responses submitted by a person described in~~
414 ~~Subsection (3)(a); and~~
415 ~~— (iv) shall enter a decision consistent with the requirements of this chapter either to~~
416 ~~grant, deny, or grant in part the relief requested in the application. }~~

417 Section {~~13~~} (6) . Section 73-6a- {~~401~~} 301 is enacted to read:
418 Part {~~4~~} 3 . Miscellaneous
419 73-6a- {~~401~~} 301 . Applicability of the chapter.

19. Page 14, Lines 424 through 425:

424 Section {~~14~~} (7) . Section 73-6a- {~~402~~} 302 is enacted to read:
425 73-6a- {~~402~~} 302 . Landowner liability.

20. Page 15, Line 429:

429 Section {~~15~~} 8 . Coordinating H.B. 187 with H.B. 153 -- Modifying language.