PUBLIC ACCESS TO PRIVATE STREAM
BEDS

2010 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke
Senate Sponsor: ____________

LONG TITLE
General Description:
This bill addresses public recreational activities on public waters over private beds.

Highlighted Provisions:
This bill:
- defines terms;
- allows recreational activity within the ordinary high water mark of a public water over a private bed;
- allows portage around certain manmade obstacles;
- prohibits portage around certain natural obstacles on property to which access is restricted;
- allows a property owner to place a fence across a public water in certain circumstances;
- addresses access to public waters;
- prohibits certain conduct on public waters;
- requires the Division of Wildlife Resources to create a public access certificate, required to use public water over a private bed;
- creates criminal penalties for violations of the chapter's provisions;
- absolves a property owner of liability for certain conduct in connection with recreational uses; and
H.B. 80

> makes technical changes.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:

AMENDS:

57-14-4, as last amended by Laws of Utah 1997, Chapter 62
57-14-7, as last amended by Laws of Utah 1997, Chapter 62

ENACTS:

73-6a-101, Utah Code Annotated 1953
73-6a-102, Utah Code Annotated 1953
73-6a-201, Utah Code Annotated 1953
73-6a-202, Utah Code Annotated 1953
73-6a-203, Utah Code Annotated 1953
73-6a-301, Utah Code Annotated 1953
73-6a-302, Utah Code Annotated 1953

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

Section 1. Section 57-14-4 is amended to read:

57-14-4. Owner's permitting another to use land without charge -- Effect.
(1) Except as provided in Subsection 57-14-6(1), an owner of land who either directly
or indirectly invites or permits without charge or for a nominal fee of not more than $1 per year
any person to use the land for any recreational purpose, or an owner of land who owns a private
bed beneath a public water, as defined by Section 73-6a-102, does not thereby:

[(1) (a)] (a) make any representation or extend any assurance that the premises are safe for
any purpose;

[(2) (b)] (b) confer upon the person the legal status of an invitee or licensee to whom a
duty of care is owed;

[(3) (c)] (c) assume responsibility for or incur liability for any injury to persons or property
caused by an act or omission of the person or any other person who enters upon the land; or
owe any duty to curtail the owner's use of his land during its use for
recreational purposes.

(2) A person who sues an owner of land for liability for injuries sustained as a result of
the person's recreational activities on the owner's land shall pay the owner's attorney fees and
litigation costs incurred in the owner's defense of the suit, if the person's suit is unsuccessful.

Section 2. Section 57-14-7 is amended to read:

57-14-7. Person using land of another not relieved from duty to exercise care.

(1) This chapter [may not be construed to] does not relieve any person, using the land
of another for recreational purposes, from any otherwise existing obligation [which the person
may have in the absence of this act] to exercise care in use of the land and in activities thereon,
or from the legal consequences of failure to employ care.

(2) A person using land under this chapter waives any claim arising from the
landowner's negligence in connection with the use of the land by the person using the land
under this chapter.

Section 3. Section 73-6a-101 is enacted to read:

CHAPTER 6a. RECREATIONAL USE OF PUBLIC WATER


73-6a-101. Title.

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

Section 4. Section 73-6a-102 is enacted to read:

73-6a-102. Definitions.

As used in this chapter:

(1) "Bed" means an area within the ordinary high water mark of a public water.

(2) "Harass" means:

(a) assault, as defined in Section 76-5-102; and

(b) an offense against an animal enterprise, as described in Section 76-6-110.

(3) "Ordinary high water mark" means:

(a) the line that a water body impresses on the soil;

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

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

vegetation; and

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

(b) the area actually submerged by water that is not flood water in an area where the

line the water body impresses upon the soil, as defined in Subsection (3)(a), is not readily

identified.

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

(5) "Private bed" means a privately owned bed of a public water.

(6) "Private property to which access is restricted" means privately owned real

property:

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

(b) that is:

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

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

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

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

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

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

(d) that the owner or a person authorized to act on the owner's behalf has requested a

person to leave as provided by:

(i) Section 23-20-14;

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

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

(7) (a) "Public water" means water:

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

(ii) flowing or collecting on the surface:

(A) within a natural or realigned channel; or

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

(b) "Public water" does not include water flowing or collecting on private property in a

manmade:

(i) irrigation canal;

(ii) irrigation ditch; or

(iii) impoundment or reservoir constructed outside of a natural or realigned channel.
(8) (a) "Recreational activity" means activity that:
   (i) is lawful;
   (ii) is engaged in:
   (A) for a recreational purpose; or
   (B) a commercial purpose if a person is guiding or outfitting another person who is
   engaging in recreational activity;
   (iii) requires use of the water to be effectively enjoyed or accomplished; and
   (iv) actually uses the public water when undertaken.
(b) "Recreational activity" does not include hunting on any public water, except
waterfowl hunting done in compliance with Sections 23-20-8, 73-6a-201, and 76-10-508.

Section 5. 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.
(1) Except as provided by Subsection (2), a person who touches a private bed on
private property to which access is restricted without permission is subject to liability for
trespass under:
   (a) Section 23-20-14;
   (b) Section 76-6-206;
   (c) Section 76-6-206.3; and
   (d) a civil action for a claim arising out of touching the private bed.
(2) A person possessing a valid public access certificate in accordance with Section
73-6a-202 who engages in recreational activity in a public water containing sufficient water at
the time to support the recreational activity may touch a private bed without permission.
(3) While engaging in a recreational activity on private property to which access is
restricted as authorized by Subsection (2), a person may leave the bed only if:
   (a) the person has permission to enter the private property; or
   (b) (i) a manmade obstruction precludes the safe passage of a person engaged in
   recreational activity or the continuation of recreational activity in the bed; and
   (ii) the person walks or portages outside the bed around the manmade obstruction in
the most direct and least obtrusive manner to re-enter the public water at the nearest safe point
past the manmade obstruction.
(4) (a) Except as provided in Subsection (4)(b), a person may not leave the bed on private property to which access is restricted to walk or portage around a natural obstacle without permission.

(b) (i) A person floating on a public water in a boat, raft, tube, or other flotation device may leave the bed on private property to which access is restricted to walk or portage around a natural obstacle without permission if the natural obstacle poses a danger to the person and the person is unable to safely navigate around the natural obstacle or retreat in the direction from which the person approached the natural obstacle.

(ii) A person walking or portaging in accordance with this Subsection (4)(b) shall walk or portage in the least obtrusive manner possible, leaving and reentering the private bed at a safe point nearest to the obstacle.

(5) (a) The owner of a private bed under a public water may place a fence or obstruction across a public water if the fence or obstruction is placed for a reason other than blocking access for public recreational activity.

(b) The owner of a private bed under a public water placing a fence or obstruction across the public water shall construct and maintain the fence or obstruction in a manner:

(i) that does not unreasonably endanger the safety of a person engaged in recreational activity using the public water; and

(ii) consistent with any applicable law or administrative rule.

(c) A person may not place a fence or other obstruction on a highway or other public right-of-way intersecting a public water unless a gate or other form of passage is provided to allow the public to access the public water from the right-of-way to engage in any recreational activity permitted on the public water.

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

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

(b) on private property to which access is restricted, with permission; or

(c) on private property to which access is not restricted.

(7) A person may not engage in recreational activity on a public water if the recreational activity:
(a) destroys, materially damages, removes, or alters real or personal property, including:
   (i) a fence, as provided in Section 4-26-4;
   (ii) a structure;
   (iii) diversion works; or
   (iv) vegetation, soil, or rock other than incidental to ordinary use;
(b) alters or obstructs water flows;
(c) involves construction or maintenance of a structure on the bed; or
(d) is undertaken on:
   (i) horseback;
   (ii) a motor vehicle, as defined in Section 41-6a-102;
   (iii) an off-highway vehicle, as defined in Section 41-22-2; or
   (iv) a non-motorized wheeled vehicle.
(8) While engaging in recreational activity on a public water, a person may not:
(a) litter in violation of state law;
(b) destroy or deface public or private property;
(c) harass livestock; or
(d) harass a property owner.
(9) A person, including the owner of a private bed, may not harass a person engaged in
recreational activity on a public water.
Section 6. Section 73-6a-202 is enacted to read:


(1) The Division of Wildlife Resources shall create a free public education program to
inform the public of this chapter's provisions concerning access to public waters and private
beds.
(2) The public education program shall:
   (a) be made available to the public on the Internet; and
   (b) allow a person, upon completion of the program, to print a public access certificate.
(3) A public access certificate is required before a person may exercise the access
rights described in Section 73-6a-201.
(4) The public access certificate is effective:
(a) upon successful completion of the online education program; and
(b) for 365 days after completion of the online education program.

(5) Except as provided in Subsection (6), a person may not:
(a) engage in recreational activity on a public water under authority of Section 73-6a-201, unless:
   (i) the person obtains a public access certificate; and
   (ii) carries the public access certificate with the person while engaged in recreational activity on the public water; and
(b) lend, transfer, sell, trade, give, or assign a public access certificate or any associated rights to another person.

(6) (a) A person under the age of 18 is not required to obtain or possess a public access certificate if:
   (i) the person is part of a group of juveniles of more than three and less than 10 in number who are jointly engaging in recreational activity under authority of Section 73-6a-201; and
   (ii) the group is accompanied and led by one or more adults possessing a valid public access certificate.
(b) A person under the age of 12 is not required to obtain or possess a public access certificate if the juvenile is accompanied and supervised by an adult possessing a valid public access certificate.
(c) A person is not required to obtain or possess a valid public access certificate if:
   (i) the person is a customer of an outfitting company registered with the Division of State Parks and Recreation; and
   (ii) the outfitting company and each of its guides or captains obtains and possesses a valid public access certificate and informs the customer of this chapter's provisions.
(d) An adult, outfitting company, guide, or captain possessing a valid public access certificate under this section is civilly responsible for the conduct of a juvenile or customer who violates this chapter's provisions.

Section 7. Section 73-6a-203 is enacted to read:

73-6a-203. Penalty.

(1) Except as provided in Subsection (2), a person who violates this part is guilty of a
class B misdemeanor.

(2) A person who violates this part by not obtaining or possessing a valid public access certificate is guilty of an infraction.

(3) (a) A court may revoke the public access certificate privileges of any person who is guilty of two or more offenses punishable under Subsection (1).

(b) If a court revokes the public access certificate of a person under Subsection (3)(a), the court shall promptly notify the Division of Wildlife Resources of the revocation.

(c) The Division of Wildlife Resources, upon receiving notice of revocation from a court, shall prohibit the person from obtaining a public access certificate under Section 73-6a-202 for the duration specified in the court's order.

Section 8. Section 73-6a-301 is enacted to read:

Part 3. Miscellaneous

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

The provisions of this chapter do not affect:

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

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

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

Section 9. Section 73-6a-302 is enacted to read:

73-6a-302. Landowner liability.

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

Legislative Review Note
as of 1-6-10 3:09 PM

Office of Legislative Research and General Counsel
Fiscal Note

H.B. 80 - Public Access to Private Stream Beds

2010 General Session
State of Utah

State Impact

Enacting this bill will require a $6,800 ongoing General Fund appropriation to Courts that will be off-set by $7,100 in fines for a net revenue increase of $300 per year.

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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.


Office of the Legislative Fiscal Analyst